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THE NAVY, NAVAL PETROLEUM RESERVES AND THE OFFSHORE OIL CONTROVERSY

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THE NAVY, NAVAL PETROLEUM RESERVES AND THE OFFSHORE OIL CONTROVERSY

by

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I. INTRODUCTION - A STATEMENT OF THE PROBLEM

President William Howard Taft, by an Executive Order dated 2 September 1912, created Naval Petroleum Reserve No. 1, setting aside for the exclusive use of the Navy an area of 38,072.71 acres in Elk Hills, Kern County, California.[1]

President Harry S. Truman, by Executive Order No. 10426 dated 16 January 1953, created an unnumbered Naval Petroleum Reserve or Naval Petroleum Reserves, to be comprised of "the lands of the continental shelf of the United States and Alaska lying seaward of the line of mean low tide and outside the inland waters and extending to the furthermost limits of the paramount rights, full dominion, and power of the United States over lands of the continental shelf."[2]

The action of President Taft gave rise to apparently insignificant discussion or opposition. No national magazine of the time can be found locally that even mentions the matter. The "New York Sun" of the next day carried a story describing President Taft's activities on that Labor Day, Monday, 2 September 1912, which he spent at his summer home near Beverly, Massachusetts. The President played golf during the morning with his son Charles, and "after luncheon he spent several hours dictating letters."[3] Only one of those letters was of sufficient interest nationally that the Sun's story devoted any space to it; the President named a new appointee to the position of Pension Clerk for the Eastern District of New York. Presumably, of lesser interest at the time was his establishment of the Elk Hills Naval Petroleum Reserve.

---

[1]Code of Federal Regulations of U. S., Vol. 9, Title 34, Part 9.2, p 186.
[2]Federal Register, Doc. 53-734.
[3]N.Y. Sun, Vol. LXXX, No. 3, (3 Sept. 1912) p. 5.

1. Introduction - A History of the Problem

President Wilson moved [illegible], by an executive order dated
2 September 1922, reserved naval petroleum reserve No. 1, including excess
the exclusive use of the Navy on acts of Congress in the Elk Hills, Kern
County, California.[1]

President Harry A. Truman, by executive order No. 10426 dated
24 January 1952, directed the Secretaries Navy Department Secretary of Defense
Petroleum Reserves, to be completed at the lands of the unconsumed result
of the United States and claims lying seaward of the line of mean low tide and
outside the inland waters and extending to the jurisdictional limits of the pere-
mony rights, full dominion, and power of the United States over lands of the
continental shelf.[2]

The actions of Presidents Taft have since be mysteriously investigations
discussions or opposition. No unofficial acquisition of the line can be found
locally that even mentions the matter. The "Red Book" of the Navy Dep
carried a story describing President Taft's activities on that issue Dep,
Monday, 2 September 1912, which he spent at the Beaver Lodge camp Harvard,
Pennsylvania. The President played golf during the morning with his son
Charles, and "after lunch he rested reading letters."[3]
only one of these visits was of military interest particularly that the
Taft's party devoted any effort to try the President issued a new objective to
the position of Pearl Harbor for the Hawaii District of Oahu Dep. Pre-
sumably, of lesser interest as the time was its accomplishment of the Elk
Hills Naval Petroleum Reserve.

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[1] Code of Federal Regulations of U. S., Vol. 9, Title 32, Part 3.3, p 100.
[2] Federal Register, Dec. 13-17th.
[3] N.Y. Tmes, Vol. LXII, No. 3, (3 Sept. 1912) p. 2.

The action of President Truman was one element in a political struggle that had raged through the courts and Congress for more than fifteen years. As such, the reactions to this setting aside of petroleum resources under the offshore areas of our nation were, in the words of the nation's press, either, "Harry Truman's last blow in a long standing fight."[1]; a temporary Truman victory because, although President Eisenhower could readily rescind the action by another Executive Order, he and the Republican Congress would have to accept the odium of taking the oil away from the Navy[2]; or, to quote Representative Wingate Lucas, Texas Democrat, "another attempt of socialists in the Administration to perpetuate Federal control of the tidelands."[3]

It may be said that President Taft's Executive Order excited little significant comment, in part because no one doubted in the slightest the President's authority to so set aside the Public Lands involved, and in part because petroleum was a relatively minor item in our nation's economy in 1912.

Strangely coincidentally, just two columns away from the Sun's story on the President's activities of that day in 1912, that failed to even mention the new Naval Petroleum Reserve, there was a short article covering the production history of the United States' petroleum industry since its inception fifty-three years earlier. It was estimated therein, that, from the beginning of the oil industry in this country, over 2,500,000,000 barrels of oil had by then been produced, with a conservative valuation of nearly $2,000,000,000.[4] These statistics may be conveniently compared with annual United States production in 1953 alone, of 2,357,481,000 barrels with an estimated value of $6,294,474,000.[5]

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[1]Time Magazine, Vol. LXI, No. 4, (26 Jan. 1953), p. 19.
[2]Newsweek, Vol. XLI, No. 3, (19 Jan. 1953), p. 73.
[3]Newsweek, Vol. XLI, No. 4, (26 Jan. 1953), p. 77.
[4]N.Y. Sun, Vol. LXXX, No. 3, (3 Sept. 1912), p. 5.
[5]World Oil, Vol. 138, No. 3, (15 Feb. 1954), p. 150.

[illegible] [illegible] [illegible] [

Conversely, a portion of the dissent aroused by President Truman's Executive Order came from opposition to the concept that all the lands involved were under the jurisdiction of the Federal government and could, therefore, be so set aside by the President, and a further significant portion of the dissent arose from opposition to the theory that such setting aside of offshore oil lands was the best method to insure for posterity the availability of the petroleum products required in the defense of the nation.

It is the writer's intention, herein, to examine these two fields of dissent, to trace the historical development of the problem to the extent that it may feasibly be traced, and to set forth his thesis as to a recommended policy in the premises for possible guidance of personnel of the Department of the Navy.

Any reader of this paper is enjoined to consider that the opinions, conclusions and recommendations contained herein, and not specifically attributed to an official document of the Federal government, are purely products of the writer's mind and that they in no way state or reflect the policies, opinions or conclusions of the Department of the Navy or of any other facet of the Federal government.

II. THE CONTINENTAL SHELF

A. Concept of the Term

It will have been noted that President Truman twice used the term "continental shelf" in the portion of his Executive Order No. 10426 previously quoted. First the term was used as an all inclusive and undefined geographical element "...the lands of the continental shelf of the United States and Alaska.". Then came a delimitation as to the shoreward boundaries, "...seaward of the line of mean low tide and outside the inland waters..." The land edge of the continental shelf was thus quite explicitly defined. But the delimitation as to the seaward boundary is somewhat less explicit, "...extending to the furthermost limits of the paramount rights, full dominion and power of the United States over the lands of the continental shelf."

The notion of a continental shelf is not one of mere fantasy, nor is it merely a created combination of words to describe a nebulous feature of the Earth's surface. The continental shelf exists under water just as surely as do the veldts, steppes, plateaus, plains, swamps and mountains of the continents and islands of the Earth's land surfaces.

Commencing about a hundred years ago, there was a marked increase in the number of oceanographic soundings and surveys made for scientific, commercial and defense purposes.

In the correlation of the data from these surveys, it was noted that, generally speaking and almost universally throughout the world, going from shore to sea, the depth of water increased gradually to a certain figure and then the sea-bottom broke more sharply down, as if an edge had been reached and passed. Further, the data showed that this edge occurred, almost world wide, at approximately the 200 metre, or 100 fathom, isobath.

Thus we have, as a literary definition of the term:

> "The continental shelf is the part of the sea-bottom and the soil underneath, which is covered by shallow waters, up to a depth where the slope of the sea-bottom increases noticeably in steepness, which fringes large parts of the continents, over varying distances from the coasts."[1]

With the existence of the continental shelf thus established and with the term so defined in a literary sense, we may proceed to examine and explain it more fully, geologically and geographically, and to attempt to more specifically delimit its seaward boundaries.

---

[1] M. W. Mouton, "The Continental Shelf", (The Hague, Martimus Nijhoff, 1952), p. 1.

B. Geological Aspects

Geologically, there is too little known about the continental shelf today to permit any theory of its origin and composition to be fully accepted by all.

One theory has it that, spasmodically, a warping or tilting movement has taken place along the continental border, causing a submergence of what was formerly the margin of the continent and a simultaneous bowing-up of a marginal tract ashore and parallel with the newly formed coast line.[1]

A second widely accepted theory is that the shoreline is not a hinge-line - the locus of tectonic movement - but that the continental shelf and the adjacent land differ: (1) only in that one is covered with water, (2) and because of the differing erosive agencies working on each. This theory further proposes that the significant tectonic zone is at the outer edge of the continental shelf - i.e., at the continental slope, rather than at the shore line.[2]

So far, neither of these theories has received universal acceptance. Proponents of each can cite numerous isolated examples of known geology that prove their theory, and in nearly each instance these examples refute the contrary theory as they prove the favored theory.

Whether the continental shelf is the direct result of the work of waves and currents - cutting at the continents and building up the shelf by

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[1] J.H.F. Umbgrove, "Origin of Continental Shelves," Bulletin Amer. Assoc. Petroleum Geologists, Vol. 30, No. 2, (February, 1946), pp. 249-253.

[2] Paul Weaver, "Variations in History of Continental Shelves," Bull. A.A.P.G., Vol. 34, No. 3 (March, 1950), pp. 351-360.

B. Imputed Income

Intuitively, income in the Haig-Simons sense is the additional benefit to consume over the course of the period not dependent on the fiscal treatment of all.

[illegible] the change over it [illegible] economically a problem as existing treatment [illegible] [illegible] [illegible]

deposition of the cuttings, or whether the shelf is merely the rim of the continent - flooded by the sea because the ocean is now too large for its basin and so overflows the land, has not yet become especially important to oil companies operating in the near offshore areas.[1] So far, closely offshore geologic structures similar to producing structures just inshore have been generally productive and little further thought has been given to the matter by company executives. As exploration proceeds farther from shore, selection of the valid theory must be made. When the time of necessity arrives, additional data obtained from wells drilled in the interim will surely be available. In certain localities, to date, strata have been found offshore at elevations they would occupy under one theory and at other localities, strata correlation with strata ashore indicates proof of the other theory. Electrical and radioactivity logging have permitted adequate correlation in either event and the relatively minor elevation differences have been of little importance because most offshore drilling to date has been reasonably near the beach.

The one significant geological and topographical feature of the continental shelf that seems to be clearly established is that its extent and slope closely follow the topography of the near shore. If the near shore is steeply mountainous, as in Norway, the continental shelf is narrow and quickly drops off into the continental slope. If the near shore is flat or very gently rising, as in Louisiana, the continental shelf is extensive and of equally gentle slope. Perhaps this is best examplified by the narrowing of the continental shelf as one proceeds westward along the Gulf Coast from the swampy flat-lands of the Texas-Louisiana border to the area of more topographic relief as the Mexican border is approached.

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[1] Oren F. Evans, "Shoreline Processes of the Continental Shelf," World Oil, Vol. 129, No. 2, (June, 1949), pp. 80-85.

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[1] Glenn T. Seaborg, "Nuclear Properties of the Heaviest Elements," Science, Vol. 213, No. 4, (June, 1969), pp. 307-315.

Oil has been found beneath the continental shelf in the Gulf, opposite proven producing areas of the Texas and Louisiana mainland. Similarly, oil has been found beneath the Pacific, opposite proven producing areas in California. To date, oil has not been found on a continental shelf completely disassociated from comparable deposits just ashore. However, neither has there been significant exploration in any such disassociated areas.

C. Geographical Aspects

Geographically, the continental shelf exists from pole to pole and borders both the Americas and Eurasia. Its width varies from less than a mile to more than eight hundred miles but almost always, along the rim of each continent, it exists. Umbgrove has stated, "Along the coast of Angola and off the Ivory Coast the isobath of 1,500 to 2,000 meters approaches the coast so nearly that no shelf at all is present."[1] Evans, in his previously referenced article, has this to say about the width of the continental shelf, "It is generally narrow along the west sides of both North and South America, but on the opposite side of the Pacific along the Asiatic coast, it is the widest in the world, reaching 750 to 800 miles in the Yellow Sea and in the Gulf of Siam."[2]

Probably the most extensive shelf in the world is that connecting Java, Sumatra, Malacca and Borneo. Other wide shelves are found south of the Behring Strait, north of Siberia and Alaska, between Australia and New Guinea and in the North Sea.

Of principal interest in this presentation is the geography of the continental shelf bordering the United States. No portion of the marine perimeter of this nation is without a shelf, but its width varies widely. Eighteen miles is the average width along the Pacific coast, but it rarely exceeds ten miles off the proven oil-bearing areas of California. Off the Gulf Coast of Texas and Louisiana, the continental shelf is considerably

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[1] J.H.F. Umbgrove, The Pulse of the Earth, (The Hague, 1947), p. 104.

[2] Oren F. Evans, "Shoreline Processes of the Continental Shelf," World Oil, Vol. 129, No. 2, (June, 1949), p. 80.

[illegible]

[illegible] [illegible] [illegible] [

wider, varying from forty miles to a hundred and forty miles, and averaging out for the entire Gulf Coast at about fifty-nine miles. The continental shelf off the Atlantic Coast averages a width of seventy-three miles, but so far no one has found enough oil to make this widest span very significant.

D. Petroleum of the United States Continental Shelf

Petroleum discoveries to date beneath the continental shelf of the United States have been principally characterized as merely extending known petroliferous areas and situations ashore.

Estimation of the potential reserves of petroleum that underlie the continental shelf must be extremely speculative in the present stage of knowledge of the shelf areas. The development of the underwater fields has hardly begun and wholly insufficient data are available to provide a basis for a really sound estimate.[1]

Most petroleum discoveries to date off the coasts of Louisiana and Texas have been associated with salt domes, similar to the salt-dome fields in the coastal regions of these states. Oil fields along the California coast are generally localized in deep sedimentary basins which are oblique to the general trend of the coast line and extend westward into the sea. Some petroleum has already been found in these submarine extensions of shore geology and it may be presumed that future excellent prospects exist in them.

Comparisons of the dry land areas of the coastal states that are underlain in part by producing oil fields, with adjacent areas of the continental shelf that are inferred to be underlain by similar and productive sediments have been used as a means of arriving at figures suggestive of the order of magnitude of the reserves beneath the shelf areas.

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[1] Statement of Ralph L. Miller, Chief, Fuels Branch, Geological Division, U.S. Geological Survey; Hearings before U.S. Senate Committee on Interior and Insular Affairs, on S.J. Res. 13 etc., 24 Feb. 1953, pp. 581-584.

Utilizing this geological extrapolation, because there are no better data, the U. S. Geological Survey has estimated petroleum reserves of the continental shelf off the coasts of Texas and Louisiana to approximate 13 billion barrels. Their comparable estimate for the continental shelf off the coast of California is 2 billion barrels.[1]

Available information does not indicate, for the present, that reserves of any significant magnitude may be feasibly postulated for other areas of the continental shelf bordering the United States.

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[1] Ibid., pp. 582,583.

III. INTERNATIONAL LAW CONCERNING NATIONAL LIMITS

A. Early History, 1494 - 1782

1. Treaty of Tordesillas - 1494

The concept of territorial waters in the oceans is a relatively recent origin. Although older claims governing national interests in the oceans of the world have at times been quite extensive, the actual rights exercised under such claims have been limited in extent.[1]

With the rise of the great maritime nations at the end of the Middle Ages, came one of the first such published claims over the waters of the oceans. Pope Alexander VI divided oceans and territories of the New Worlds between Spain and Portugal and his decision was confirmed by the Treaty of Tordesillas of 7 June 1494.

By this Treaty, Spain asserted dominion over and exclusive rights to navigate the Pacific, the Gulf of Mexico and the Western Atlantic. Portugal's claims extended to the Atlantic south of Morocco and covered the Indian Ocean. England and Holland, however, were unwilling to accept such a division and answered the Iberian decrees with deadly efficient forays by Drake, Cavendish and their cohorts. Thus history prepared a setting for a determination under such international law as existed at the time as to the actual extent of sovereignty of nations over the seas.

2. Bynkershoek's Doctrine, 1702

During the time when some nations were asserting a wide maritime dominion, and other nations were opposing such pretensions, there was a

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[1] M. W. Mouton, op. cit., p. 188.

[illegible]

[illegible]

[illegible]

general recognition that every maritime State was entitled to exercise jurisdiction over some extent of the neighboring sea.[1]

A new doctrine for the measurement of a nation's dominion in the coastal sea was first stated in 1702 by Bynkershoek. Effectiveness of occupation and control of the sea was the basis of his position; the sea, to the distance that a cannon shot could reach and thereby control, might be appropriated.[2]

Thus were territorial waters conceived, and the extent of a nation's sovereignty over her contiguous seas to be determined.

3. Galiani's Doctrine, 1782

Galiani, an Italian jurist, writing in 1782, announced the range of an "international-law" cannon as three miles. "Hence that distance, measured from the low water mark, became common place among authors for the width of the littoral sea, and we may say that the agreement on it as a minimum is universal; no State claims less."[3]

There is ample evidence that no cannon of that time had a range even approaching three miles - or its approximate equivalent of one league -[4] but the three-mile-limit was popularly accepted and came down through the intervening years as the limit most generally accepted and adhered to by the majority of the maritime nations of the world.

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[1] W.W. Wouton, op. cit., p. 193.

[2] Ernest R. Bartley, "The Tidelands Oil Controversy," (Univ. of Texas Press, Austin, 1953), p. 9.

[3] W.W. Wouton, op. cit., p. 195.

[4] Ibid., pp. 195-199.

B. United States' History, 1776-1944

The lands of what were the thirteen original states of the United States had been granted to the earlier colonies as grants from the King of England. The only source of legal title to the soil was that claimed by the Crown of England by right of discovery.[1] English writers and courts generally upheld the sovereignty and jurisdiction of the British Crown over the marginal sea,[2] to the extent of the "three-mile-limit."

Charters granted to the original British Colonies might be considered as likely sources for some specific ruling in the matter, but they are all distressingly vague, although it is true that grants were made that included, "all havens, ports, rivers, waters, fishings, mines and minerals, as well royal as other mines etc., and all and singular other commodities, jurisdictions, royalties, privileges, franchises and pre-eminences, both within the said tract of land upon the main and also within the islands and seas adjoining."[3]

The doctrine of English jurisprudence to the effect that the Crown owned marginal seas to the extent of three miles out from the low-tide mark, coupled with the language of the Crown Charters to the Colonies, leads to the conclusion that the Colonies received title to the three-mile marginal sea belt.

With the creation of the Republic, it was construed that territorial sovereignty passed from the new states to the new Federal government. Early decisions of the United States courts apparently accepted the concept that

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[1]Ernest R. Bartley, op. cit., p. 18.

[2]Ibid., pp. 10-19.

[3]Grant of 3 November 1620 of James I to the Plymouth Company, as quoted by Ernest R. Bartley, op. cit., p. 18.

[illegible] [illegible] [illegible] [

this marginal belt in the seas was a portion of the territory of the nation and also that such a territorial concept was a reflection of practice in international law. Chief Justice John Marshall, in 1804, wrote in a Supreme Court decision:

> "The authority of a nation, within its own territory, is absolute and exclusive. The seizure of a vessel, within range of its cannon, by a foreign force, is an invasion of that territory, and is a hostile act which is its duty to repel."[1]

In 1812, Justice Story in the Case of The Ann, reiterated the earlier statement by Chief Justice Marshall, saying:

> "All the writers upon public law agree that every nation has exclusive jurisdiction to the distance of a cannon shot, or marine league, over the waters adjacent to its shores ... and this doctrine has been recognized by the Supreme Court of the United States. Indeed such waters are considered as a part of the territory of the sovereign."[2]

With the doctrine thus recognized and established by our Supreme Court, that sovereignty of the United States extended three miles off shore, it was natural that, in our international relations, we should utilize this doctrine. This we did in the 1903 Treaty with Panama, creating the Panama Canal Zone. Article II of that Treaty states:

> "The Republic of Panama grants to the United States in perpetuity the use, occupation and control of a zone of land and land under water for the construction, maintenance, operation, sanitation and protection of said Canal of the width of ten miles extending to the distance of five miles on each side of the center line of the Canal to be constructed; the said zone beginning in the Caribbean Sea three marine miles from mean low water mark and extending to and across the Isthmus of Panama into the Pacific Ocean to a distance of three marine miles from mean low water mark."[3]

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[1] 2 Cranch 187, 234 (Church vs. Hubbart) as quoted by Ernest R. Bartley, op. cit., p. 23.

[2] Fed. Cases No. 397 (1812).

[3] W. M. Malloy, Treaties, Conventions, International Acts, Protocols, and Agreements of the United States, (Govt. Printing Office, Washington, 1910) Vol. II, p. 1350.

only employed twice in the case law to prohibit the publication of the medical and also once used a jurisdictional argument when a publication of unwelcome information [sic. Privy Council Case Centocell, in 1859, where in a fascinating court decision:

> "The publication of a medical, relates its own particular, it is the publication and evaluation. The publication of a medical, although known by the public interest, it is an invasion of privacy, and is a medical publication that which is the duty to report."[1]

In 1914, Lawrence Darcy in his case of The Lion, reiterated the medical examination that although Lawrence Darcy, explained:

> "All the evidence goes to show that the doctor [illegible] was not a medical man, but a medical man, and that he was not a medical man, but a medical man, and that he was not a medical man, but a medical man, and that he

During the reign of prohibition, this government entered into a series of "rum treaties" designed to facilitate the enforcement of the Volstead Act. As an illustration, we have the treaty with Great Britain, which declared that while three marine miles constituted the proper limit of territorial waters, Great Britain would not object to the boarding of British vessels by United States officials in search of illegal alcoholic beverages, provided such search was conducted within an hour's sailing time of the American coast.[1]

Some sixteen of these "rum treaties" were negotiated between the United States and other nations[2] and thus the century old adherence to a three-mile-limit for all purposes was broken for a specific purpose and the stage was set for even further extension of our claims for other purposes.

---

[1] 43 U.S. Stat. 1761 (1924).

[2] Ernest R. Bartley, op. cit., p. 21.

C. Expansion of Prior Concept, 1945-1953

1. U.S. Presidential Proclamation No. 2667, 1945

Although there had not been world-wide, complete concurrance with the United States' concept that international law provided generally for a three-mile-limit of territorial sovereignty, neither were there, until 1945, significant claims by any nations that such sovereignty extended to any grossly greater distances, nor were their claims, when they did extend beyond the three-mile-limit, defined in any language other than expressions of linear measure offshore. A jurisdictional claim of four miles had been expressed by Scandanavian countries prior to World War I, while Spain and certain of her colonies and former colonies laid claim to "three marine leagues" of their litteral seas, rather than the more generally accepted "three marine miles."[1]

In recent times, the first of many unilateral or bilateral declarative attempts to seriously extend the jurisdiction of nations over their marginal seas occurred in the Treaty between the United Kingdom and Venezuela of 26 February 1942. This instrument divided jurisdiction over the Gulf of Paria, which lies between the British island of Trinidad and the South American mainland coast of Venezuela. It is significant that in this treaty, the term "submarine areas of the Gulf of Paria" was defined as, "the sea-bed and subsoil outside of the territorial waters of the High Contracting Parties."[2] Since the entire Gulf of Paria was divided, no attempt was made to define outer limits of jurisdiction, but a scope beyond territorial waters was acknowledged.

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[1] Ernest R. Bartley, op. cit., p. 21.

[2] H. W. Houton, op. cit., p. 250.

[illegible]

[illegible]

[illegible]

The initial national claim of jurisdiction over marginal sea areas covering the entire continental shelf, for the avowed purpose of utilizing but conserving the mineral resources thereof, was that made by the President of the United States, in his Proclamation No. 2667 of 28 September 1945, quoted below:

> "Whereas the Government of the United States of America, aware of the long range world-wide need for new resources of petroleum and other minerals, holds the view that efforts to discover and make available new supplies of these resources should be encouraged; and
>
> "Whereas its competent experts are of the opinion that such resources underlie many parts of the continental shelf off the coasts of the United States of America, and that with modern technological progress their utilization is already practicable or will become so at an early date; and
>
> "Whereas recognized jurisdiction over these resources is required in the interest of their conservation and prudent utilization when and as development is undertaken; and
>
> "Whereas it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just, since the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore, since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it, since these resources frequently form a seaward extension of a pool or deposit lying within the territory, and since self-protection compels the coastal nation to keep close watch over activities off its shores which are of the nature necessary for utilization of these resources;
>
> "NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to the natural resources of the subsoil and sea bed of the continental shelf.
>
> "Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural

> resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent state, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected."[1]

2. Other Nations' Similar Action Since 1945

Promptly after the publication of the above quoted United States' Presidential Proclamation, other nations hastened to assert comparable claims over the mineral resources of their marginal seas. Language in the various national declarations and proclamations has differed slightly, but their intent has been uniformly to match the claims of the United States as closely as their own geography would permit.

The Mexican Presidential Declaration was first to follow the lead taken by the United States, having been issued on 29 October 1945. This Mexican Declaration defines the continental shelf as being "delimited by a two-hundred metre isobath," indicates the presence of minerals and continues:

> "For these reasons, the Government of the Republic claims the whole continental shelf adjacent to its coasts and all and every one of the national riches, known or still to be discovered, which are found on it...."[2]

There then followed in rapid succession similar declarations by Argentina, Chile, Peru, Costa Rica, Honduras, Panama, El Salvador, Ecuador, Guatamala, Nicaragua, Brazil, the Philippine Republic, Saudi Arabia, Iran, Pakistan and the United Kingdom jointly with, and on the part of, the local governments of Bahrain, Abu Bhabi, Ajman, Dubai, Kuwait, Qatar, Ras Al Khaimah,

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[1] Appendixes of Hearings on S.J. Res. 13, et al, op. cit., p. 1181.

[2] H. W. Houton, op. cit., p. 253.

> [illegible] of the nobody's and even less of the
> [illegible] really "mean" the right not-
> [illegible] to the media of the State's [illegible]
> or [illegible] to the "United States," subject
> to the jurisdiction and control. In other
> words the [illegible] would [illegible] be more
> of another "state," or be placed [illegible] on [illegible]
> state, the [illegible] would be [illegible] by the
> United States and the State [illegible] to use-
> [illegible] with [illegible]. The [illegible]
> to [illegible] of the [illegible] does not [illegible]
> [illegible] and the right to [illegible] [illegible]
> [illegible] are to me not [illegible].[3]

5. [illegible] Dealing [illegible] [illegible]

[illegible] after the [illegible] of the [illegible] [illegible]' Presidential [illegible], after [illegible] [illegible] to [illegible] [illegible] over the [illegible] [illegible] of their [illegible]. [illegible] in the [illegible] [illegible] [illegible] [illegible] [illegible], but [illegible] [illegible] as [illegible] [illegible] [illegible] [illegible] as [illegible] [illegible].

The [illegible] [illegible] [illegible] was first to [illegible] the [illegible] taken by the [illegible] [illegible], holding that [illegible] [illegible] [illegible]. This [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] by a [illegible] [illegible] [illegible],[4] [illegible] the [illegible] of [illegible] and [illegible]:

> The [illegible] [illegible], the [illegible] of the
> [illegible] [illegible] the [illegible] [illegible] [illegible]-
> [illegible] [illegible] to the courts but all [illegible] one of the
> [illegible] [illegible], [illegible] on which it is [illegible],
> which are [illegible] as [illegible].[5]

[illegible] [illegible] [illegible] to [illegible] [illegible] [illegible] [illegible] by [illegible], [illegible] [illegible] [illegible], [illegible], [illegible],

Sharjah, Umm Al Qaiwain, the Bahamas, British Honduras, Jamaica, Falkland Islands, and Trinidad and Tobago. By the end of 1950, all the above governments had asserted claim to the mineral resources of their continental shelf. When two such claims would impinge because all the sea between the two countries was on the continental shelf, the declarations emulated the language of the United States' declaration by laying claim to the shelf to an extent to be delimited by future treaties.[1]

Up to this point, little vocal international opposition to such proclamations was registered. However, on 19 January 1952, the President of of the Republic of Korea issued a comparable edict and the Japanese Government quickly rose in opposition, since that country interpreted the Korean declaration as interfering with fishing rights on the high seas.[2] More recent news dispatches from the Far East indicate continuing disagreement in the premises between these two countries.

In the Judgment of the International Court of Justice, of 18 December 1951, concerning the Anglo-Norwegian Fisheries Case but applicable by comparability to mineral resources beneath the seas, are found the following pertinent phrases:

> "It is a confirmation of the general principle of International Law, that rights and obligations cannot be altered unilaterally by passing domestic legislation.
>
> "...we also discussed whether law existed on this subject and came to the conclusion that it did not.
>
> ...."Our thesis and our often repeated urge that a Conference be convened to draft a Convention is strengthened..."[3]

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[1] M. W. Mouton, op. cit., pp. 253-260.

[2] Ibid., pp. 319-321.

[3] M. W. Mouton, op. cit., p. 330.

It may therefore be concluded that, for our purposes, the outer edge of the continental shelf has been established by the declarations of numerous nations at the 100 fathom line, approximately equivalent to the 200 metre isobath.

It may further be concluded that the United States' claim to the petroleum resources of the continental shelf off its shores is not clearly allowed by existing international law, but that it may be considered to be accepted - with the possible exception of areas near our northern border - because all possible competing neighboring nations to the south of us have recognized our Presidential Proclamation by themselves issuing comparable edicts.

IV. INTERSTATE CLAIMS AND COURT DECISIONS TO 1938

A. The Original States

Earlier herein, there was discussed the matter of the acquisition of title to their marginal seas from the British Crown by the thirteen original states. Following the American Revolution, persons holding land under Crown grants generally continued in possession of the land where the grants were found to be valid. At the time of the Revolution, therefore, each state succeeded to the rights or title of the Crown in the tidewaters within its territorial limits.[1]

Neither under the Articles of Confederation, nor under the Constitution of the United States, was mention made of the cession of these territorial rights to the national government. Article IX of the Articles of Confederation specifically provided that no "State shall be deprived of territory for the benefit of the United States."[2] The Constitution itself recognizes that the national government may acquire land, specifically, (1) by cession by the states of an area not to exceed ten miles square for a seat of government[3] and (2) by purchase of land after gaining consent of the state or states concerned.[4] To these, the courts have, by recognition, added two other means by which the federal government may acquire title to land within the borders of states. First, in the exercise of the power of eminent domain it is not

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[1]Ernest R. Bartley, op. cit., pp 31, 32.

[2]Article IX, par. 2, Articles of Confederation, as quoted in, Francis N. Thorpe, "American Charters, Constitutions, and Organic Laws", (U. S. Govt. Ptg. Off., Washington, 1909) Vol. I, p. 13.

[3]Art. 1, Sec. 8, Constitution of the United States, ibid., p. 22.

[4]Art. 1, Sec. 8, Constitution of the United States, ibid., p. 22.

[illegible]

[illegible]

[illegible]

necessary that the Federal government have prior consent of the state concerned[1]; second, in the creation of new states out of territory of the United States, the Federal government may reserve land for its own use by the inclusion of a land description in the act admitting the state to the Union.[2] It is agreed that the Federal government only in isolated specific instances acquired rights to offshore submerged lands in any of these four ways.[3]

For a valid explanation of the general acquisition by the Federal government of the offshore territorial rights of the thirteen original states, it is necessary to re-enter the realm of international law, remembering that any sovereignty over the marginal sea belt is in itself dependent on international, rather than national acceptance. This argument was particularly well stated in 1938 by Leslie McNemar, senior attorney in the Office of the Judge Advocate General of the Navy, who declared:

> "It must be remembered, however, that upon the ratification of the Federal Constitution, the international entity of the several Thirteen Original Colonies ceased and became merged in the international entity of the United States of America and that the individual States of the United States were no longer sovereign within the meaning of international law. Thus when reference is made in international law to the territorial waters of a State extending at least a marine league or three geographic miles from the shore line, it is the shore line of the United States that is intended and not the shore line of one of the municipal States thereof, such as New York, Texas or California."[4]

Mr. McNemar was well supported in his position by the frequently quoted statement of Rufus King in the Philadelphia Convention from which evolved our Federal Constitution:

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[1] Kohl v. United States, 91 U. S. 367 (1876); United States v. Gettysburg R. Co., 160 U. S. 668 (1896).

[2] Fort Leavenworth R. Co. v. Lowe, 114 U. S. 525 (1885).

[3] Adapted from a general statement by Ernest R. Bartley, op. cit., p. 36, who seems to forget at this point in his discussion the numerous lighthouses, naval yards, and coast defense installations of the Federal government.

[4] Hearings on Senate Joint Res. 83 and 92, (U. S. Govt. Ptg. Office, Washington, 1939) p. 76.

> "The states were not 'sovereign' in the sense contended for by some. They did not possess the peculiar features of sovereignty - they could not make war, nor peace, nor alliances, nor treaties. Considering them as political beings, they were dumb, for they could not speak to any foreign sovereign whatever. They were deaf, for they could not hear any proposition from such sovereign."[1]

Also, in his position, Mr. McMenar was supporting a then recent decision of the United States Supreme Court in which Justice Sutherland took pains to demonstrate that certain powers of external sovereignty passed directly from the crown to the "incipient Union" and had not become vested enroute in the states. Judge Sutherland also placed great stress on the above quoted Rufus King statement.[2]

Insofar as petroleum itself is concerned, its presence offshore from any of the thirteen original states has not yet been disclosed in commercially exploitable quantities and therefore no specific argument has been presented with respect to its ownership. It is considered that it may be concluded that the Federal government, rather than the states, owned the bed of the sea from the low-water mark out to the three-mile limit offshore from at least thirteen states.

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[1] 5 Elliot's Debates 212 as quoted by Ernest R. Bartley, op. cit., p. 30.
[2] 299 U. S. 304 (1936).

[illegible] [illegible] 112 n. quoted in Irons & Guitton, [illegible], 8, 10.
[illegible] 5, n. 3d (1974).

B. Later States

1. Non-controversial States

Since the states entering the Union subsequent to its original establishment joined under varying circumstances, and because those particular states off which petroleum is now being produced all had differing colonial or independent nation backgrounds, each state should perhaps be treated separately. However, because significant quantities of petroleum have been found, or are at present expected, offshore from only three of our forty-eight states, those three—Louisiana, California and Texas—will be discussed in more or less detail while the other later coastal states will be quickly dealt with as a group.

In the preceding section it was concluded that the Federal government held title to the submerged lands beyond the low-water mark, but it is significant that this conclusion was based largely on a Supreme Court decision of 1936, some one hundred and sixty years after the original colonies initially declared their independence from Great Britain. Such a conclusion would not have been quite so valid a hundred years ago, for as early as 1840, the Supreme Court held that the Federal government could not dispose of lands beneath the waters of Mobile Bay contrary to the desires of the state of Alabama, stating, in part: "...the territorial limits of Alabama have extended all her sovereign powers into the sea..."[1]

This decision, coupled with the universally used provision of accession acts that new states coming into the Union entered on an "equal footing" with the original states, led to the assumption that the territorial limits of the sovereign powers of all the coastal states extended three miles into the sea

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[1] 3 How. 230 as quoted by Ernest R. Bartley, op. cit., p. 47.

c. Transportation Routes

Since the slaves brought the labor subsequent to the original exploitation [illegible] labor requirements, and because black inhabitants of Haiti speak primarily in the basic language of the originally enslaved [illegible] many slaves brought to Haiti [illegible] forty-eight hours, these transportation routes, particularly as a [illegible] to be [illegible] with as a group.

In the preceding section it was indicated that the Haitian [illegible] of 1791, many [illegible] [illegible] [illegible]

and such an assumption existed until it was unseated in 1936 by the previously quoted decision written by Justice Sutherland.

Proof of this may be found in the actions of the executive departments of the Federal government which had, prior to 1938, requested and received from the states bordering on the oceans some fifteen grants of land, leases or easements involving areas located below low-water mark in the open sea.[1]

Congressional concurrence, prior to 1937, in the doctrine of state ownership, is also indicated. "No evidence can be found in Congressional hearings or debates prior to that date which would offer any support to a view that the marginal sea was held in property by the United States, rather than the individual states."[2]

2. Louisiana

Although Louisiana is one of the three states off whose coasts considerable quantities of petroleum are now being produced, her claim to the submerged soils in the marginal belt of the Gulf of Mexico is not significantly different from that of most of the other states that have been admitted to the Union since 1787.

Originally claimed, in 1682, by LaSalle in the name of the King of France, the Mississippi Valley area remained a French possession until ceded to Spain by Louis XIV after the Treaty of Paris in 1763. The area was retroceded to France in 1800 and on 30 April 1803, in violation of her agreement not to transfer Louisiana to other any other power, France sold the area to the United States for eighty million francs.

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[1]United States brief in United States v. California, 332 U. S. 19 (1947) p. 227, ff

[2]Ernest R. Bartley, op. cit., p. 95.

[illegible] 11

[illegible]

[illegible]

On 8 April 1812, Louisiana was admitted to the Union by an Act of Congress that declared:

> "The said State shall be one, and is hereby declared to be one of the United States of America, and admitted to the Union on an equal footing with the original states, in all respects whatever, by the name and title of the State of Louisiana."[1]

Here we have the "equal footing" clause in its usual form, but insofar as the marginal seas are concerned, it must be recognized that in this instance the clause is purely a formal one. Rather than the usual "three-mile-limit", the prior Act of Congress enabling the people of Louisiana to form a Constitution and State Government had contained the following specific description of the new state's coastal boundary: "...thence bounded by the said Gulf to the place of beginning, including all islands within three leagues of the coast..."[2]

Except for the tripled width of her marginal belt, Louisiana was thus in the same position as other states. The state assumed the possession of title to the submerged soils off her coast and in 1915 and 1936 passed mineral leasing acts, under which there was established a license system for mineral leases in the Gulf of Mexico.[3]

In 1938, realizing that Congress was considering the assertion of Federal jurisdiction over the submerged lands, the Louisiana State Legislature passed a boundary extension act. This act was premised on the idea that the three-mile-limit had been based on the range of a cannon, and since it was reasoned that modern artillery had a greater range, it was considered appropriate to extend the limit to twenty-seven marine miles.[4]

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[1] 2 U. S. Stat. 701.

[2] 2 U. S. Stat. 641, underlining added by this writer.

[3] Ernest R. Bartley, op. cit., pp. 56, 57.

[4] Ibid., p. 57.

[illegible]

Further, this boundary extension act minced no words in stating the legislative opinion of the state as to her jurisdiction:

> "...the State of Louisiana owns in full and complete ownership the waters of the Gulf of Mexico and of the arms of said Gulf and the beds and shores of the Gulf of Mexico and the arms of the Gulf of Mexico, including all lands that are covered by the waters of the said Gulf and its arms either at high tide or low tide, within the boundaries of Louisiana as herein fixed."[1]

3. California

Before the Mexican War of 1846, California had been governed as a Department of the Republic of Mexico. On 9 September 1850, the President of the United States approved an Act of Congress admitting the State of California into the Union. In common with all other states admitted under similar circumstances, California was, "admitted into the Union on an equal footing with the Original States in all respects whatever."[2]

As with Louisiana, the seaward boundary of the new state was described in the State Constitution that was accepted by Congress at the time of admission into the Union. The pertinent portion follows:

> "...thence running west and along said boundary line, to the Pacific Ocean, and extending therein three English miles; thence running in a northwesterly direction and following the direction of the Pacific Coast, to the forty-second degree of north latitude, to the place of beginning. Also the islands, harbors, and bays along and adjacent to the coast."[3]

Nor did California doubt, until 1937, but that she held the submerged soils in the open sea below low-water mark in fee simple. Numerous state court decisions bear out the existence of such an assumption, she exercised jurisdiction on that basis,[4] and in at least five instances the State of

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[1]Louisiana State Legislature, Act 55 of 1938 as quoted by Ernest R. Bartley, op. cit., p. 57.

[2]9 U. S. Stat. 452.

[3]Article XII, Section I, California Constitution of 1849 as quoted from Constitution of the State of California and of the United States and Other Public Documents, (State of California, Sacramento, 1941) p. 21.

[4]Ernest R. Bartley, op. cit., pp. 65, 66.

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]

> "...the limits of legislative power in [illegible] and unenforceable
> by reason of the [illegible] and of the [illegible] of [illegible]
> nor the [illegible] and secrecy of the [illegible] and the scope of
> the [illegible] of [illegible], including all [illegible] too powered by
> the problems of [illegible] and its [illegible] either as [illegible]
> or [illegible], within the [illegible] of [illegible] be [illegible]."[1]

1. [illegible]

[illegible] [illegible] [illegible] [illegible] [

California or its municipal subdivisions issued grants, leases or easements to the Federal government, covering submerged lands below the low-water mark.[1]

The first successful underwater oil development off the California coast was in the Summerland field, discovered in 1897, just south of Santa Barbara. But until 1921 there was no state legislation in California to govern the extraction of petroleum from submerged lands. In that year, a Mineral Leasing Act was enacted, reserving to the state all petroleum and other mineral deposits and authorizing the issuance of prospecting permits to tide and submerged lands.[2]

The Surveyor General of California, charged with administration of the Act, declined to issue certain permits in order to test the constitutionality of the law providing for the issuance of permits.[3] The California Supreme Court then upheld the validity of the 1921 Act, declaring, "The minerals contained in the soil covered by the tidal and submerged lands belong to the State in its sovereign rights. ...The proprietary rights of the owners bordering on tide water do not extend beyond the ordinary high-water mark."[4]

With this decision and the discovery of several new fields, oil prospecting in the California offshore areas increased in tempo, but since the 1921 Act provided for a state royalty of only five per cent, the Legislature promptly passed an emergency measure to prohibit the issuance of any additional permits until they could develop new and more suitable legislation.

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[1] United States brief, U. S. v. California, op. cit.

[2] Ernest R. Bartley, op. cit., p. 67.

[3] Ibid., p. 68.

[4] Boone v. Kingsley, 206 Cal. 148,170 (1928) as quoted by Ernest R. Bartley, op. cit., p. 68.

[illegible]

Unfortunately, the legislators reckoned without the benefit of geology. In almost every instance, the offshore reservoirs could be drained from wells located ashore or could readily be reached by wells with surface locations on shore and the bore "whipstocked" out beneath the sea.[1]

After several hectic years of charges and countercharges, fair and scandalous compromise settlements between the state and oil operators, and a plethora of politics, the State Land Act of 1938[2] lessened the chaotic exploitation of offshore oil in California.

This measure called for the making of leases on the basis of competitive bidding, and by its very substance reiterated the doctrine that resources beneath the submerged marginal belt were the property of the state.

4. Texas

Texas alone among the thirty-five states that have been added to the Union since 1789 was a truly independent nation prior to her annexation. Considering the earlier discussion of the original states' inability to conduct foreign relations and have for themselves the benefits of international law, this fact is of prime significance.

In 1836, the Texans revolted against Mexican rule and on 2 March of that year established the independent Republic of Texas. The United States, as well as France, the Netherlands and Great Britain, formally recognized the status of Texas as an independent nation.[3]

Immediately after Texas declared her independence, the Congress of the Republic of Texas defined the seaward boundary as, "beginning at the mouth of the Sabine River, and running west along the Gulf of Mexico three leagues from land to the mouth of the Rio Grande."[4]

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[1] Hearings on Senate Joint Res. 83 and 92 (1939), pp. 411-452.

[2] California Statutes, ex-session, 1938, p. 23, as quoted by Ernest R. Bartley, op. cit., p.

[3] Ernest R. Bartley, op. cit., p. 81.

[4] Ibid., p. 82.

[illegible] in Dunlap Avenue Park, 22 and 23 (1919), pp. 417-418.

[illegible] Evening Standard, 4th edition, 1919, p. 12, as quoted by Dunlap H. [illegible], [illegible], p.

[illegible] Thomas E. Dunlap, [illegible], p. 87.

[illegible], p. 98.

In 1845, nine years after becoming an independent nation, the Republic of Texas was annexed to the United States. The joint resolution passed by the Congress of the United States for the purpose of permitting the annexation of Texas contained the following provision:

> "Said State, when admitted into the Union...shall retain all the public funds, debts, taxes, and dues of every kind which may belong to or be due and owing said Republic; and shall also retain all the vacant and unappropriated lands lying within its limits..."[1]

The Texas Convention, on 4 July 1845, accepted the resolution of Congress, as submitted and quoted above. Yet, when the Congress of the United States formally admitted the new state by Act of 29 December 1845, the admission act contained the customary "equal footing" clause, as follows: "That the State of Texas shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states in all respects whatever."[2]

Despite the three-league-limit and the retention of all her public lands, Texas got the same formal acceptance as all the other states. Such treatment was strictly unilateral by the Congress; Texas herself neither asked for, received, or ever formally accepted "equal footing" with respect to her seaward boundary and her public lands.

Formal provision for leasing and developing the mineral resources beneath the waters of the Gulf was accomplished by act of the State Legislature in 1919. The procedure requires that leases to submerged lands be made on the basis of sealed bids, with the highest bidder for a particular parcel securing the lease.

State and lower Federal Courts had on several occasions upheld the state's assumption of ownership of the offshore oil and none of these decisions had been reversed by the Supreme Court prior to 1938.[3]

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[1] 5 U. S. Stat. 797-98.

[2] 9 U. S. Stat. 108.

[3] Ernest R. Bartley, op. cit., pp. 91-93.

At the request of Federal officials, the state had conveyed several parcels of submerged lands in the Gulf of Mexico to the United States between 1880 and 1912.[1] The assumption of state jurisdiction appears to have been quite generally accepted on all sides, at least until 1937.

[1]Texas brief, United States v. Texas, 339 U. S. 707 (1950) pp. 186-188.

[illegible]

V. THE NAVY'S CASE IN 1937 - 1939

A. The Situation in California

There can be no doubt that prior to 1937, both the Federal government and State government considered that the states had jurisdiction over their offshore marginal belt, at least out to their stated boundaries. Any conclusion as to the reason for the abrupt shift of policy that then took place in Washington must be largely speculation. History seldom records motives, but from the knowledge at hand it may be feasible to satisfactorily deduce acceptable reasons.

Early impetus to the move to declare the offshore oil as being under the jurisdiction of the Federal government was given by the Navy Department. Initially, the Navy's move was made with respect only to oil off the California coast. It must have been apparent to responsible officers and officials in that Department that the production from the Navy's two existing Petroleum Reserves in California would not be adequate for any serious international conflict. Details concerning the amount of petroleum available from these Reserves are presented in a later section hereof. It was also apparent that reliance for a Pacific war on the transportation of petroleum to the West Coast from other areas would be difficult and fraught with danger from enemy submarine action. This particular argument was used at the time by Captain H. A. Stuart, Director of Naval Petroleum Reserves, in testimony before the House Judiciary Committee.[1] An obvious solution, from the Navy's point of view at the time, was to curtail the then existing chaotic exploitation of California's oil reserves in order that enough petroleum might be set aside to meet expected combat requirements.

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[1] Hearings on Senate Joint Res. 208 (1938), p. 37.

The California oil production picture at that time has been briefly touched on in an earlier section. It will be recalled that the State Legislature had, in 1929, prohibited any further exploration in the "state-owned" submerged lands,[1] and that these purported restrictions were not lifted until nine years later.[2] With geology, geography, economics and directional drilling all arrayed against the prohibition, it was essentially nullified. With their production from submerged lands probably illegal anyway, there was little temptation for oil operators to accomplish that production with any semblance of conservation practice whatever. As Captain Stuart declared, "The Government cannot depend on the industry in California to conserve any significant amount of oil for the national defense. The commercial interests of that industry are concerned primarily with profits, immediate and sustained."[3]

Even the approximate extent of the frantic exploitation will never be truly known. In 1937, a compromise agreement was reached between the state and the Standard Oil Company of California, by which the state received $500,000 for its claims against the company for production from the "state-owned" marginal lands. State Senator Culbert L. Olsen labeled this transaction, "an outright gift by the state to the oil company of over $5,000,000 and a flagrant betrayal of the people."[4] It may be surmised that the true value of the oil produced by this one company from the offshore areas was somewhere between the two cited figures.

Assistant Secretary of the Navy, Charles Edison, writing to the Speaker of the House of Representatives on 20 February 1939, relative to the

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[1] California Statutes, 1929, p. 944, op. cit.

[2] "State Lands Act," Calif. Stats. ex. sess. 1938, p. 23, op. cit.

[3] Hearings on Senate Joint Res. 83 and 92 (1939), p. 48-49.

[4] Ernest H. Bartley, op. cit., p. 72, quoting from the Los Angeles Daily News, 13 October 1937.

[illegible] [illegible] [illegible] [

California situation, stated:

> "During the past nine years the State's reserves have been depleted by nearly twenty per cent, due primarily to withdrawals in excess of actual normal needs, whereas the reserves of the nation outside of California have shown a very pronounced increase...."[1]

At that time, it appears that the Navy concluded that the best way to accomplish the desired conservation would be to lock up all the oil left in the ground in the offshore areas by establishing them as a Naval Petroleum Reserve and hence this recommendation was made to the Congress.[2]

It should have been clear to all concerned that the geology and geography that had nullified California's control attempts would pose comparable insoluble problems in the administration of an offshore Naval Petroleum Reserve. Geologically, the Navy was asking for something that it just couldn't have, and this was brought out in the Congressional hearings.[3]

Even with the geologic impossibility of maintaining an offshore reserve clearly established, the Navy persisted in arguments for Federal control of the offshore oil. We must therefore look further in any attempt to determine just what the Navy was trying to do.

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[1] Hearings on Senate Joint Res. 83 and 92, (1939), p. 21-22.

[2] Hearings on Senate Joint Res. 208, (1938), p. 37.

[3] Hearings on Senate Joint Res. 83 and 92, (1939), p. 347.

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[illegible] [illegible]
[illegible] [illegible]

B. The International Situation

For a part of the time these discussions were being held in Washington, the writer served in a ship of the United States Fleet in the Pacific. Conditions were far different from those experienced in the same ocean a few years later, but even at that time there was only one expected possible enemy. That expected enemy - Japan - had insignificant petroleum reserves of her own. Not many years before, our own Navy had thought that they could store, in above-ground tanks at Pearl Harbor, enough petroleum to carry them through a Pacific war. It was expected that Nippon would quickly deplete her petroleum supplies and that her ships, in their last sortie to defeat, would be burning oil pressed from rape-seed and peanuts. That is exactly what did happen in 1945 after it had taken us four years to effectively seal off oil shipments to the Empire from the conquered East Indies.

In 1937 Japan had already extended her conquest to the Chinese mainland. That year our gunboat, PANAY, was sunk in the Yangtze by Japanese planes.

It may, therefore, be surmised that a real reason behind the Navy's position was stated by Mr. McNemar when he declared that the Navy was vitally interested in trying by all means possible to "force the private interests to desist from wantonly destroying these petroleum deposits ... and prevent this oil from being ... supplied to a certain Asiatic nation under circumstances inimical to our national defense."[1]

This statement couples nicely with the previously given quotation from Assistant Secretary Edison's letter of 20 February 1939, that California

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[1] Brief of Leslie C. McNemar, Hearings on Senate Joint Res. 83 and 92, (1939), p. 88.

[illegible] [illegible] [illegible] [

oil reserves were being excessively depleted by "withdrawals in excess of actual normal needs."[1]

It may now be reasonably concluded that the Navy was seriously concerned about excessively produced California oil going to their expected next probable enemy and that perhaps their main reasons for entering the argument over Federal versus State ownership were not merely to attempt to shut off this undesirable drain on the petroleum reserves of the United States but were more principally to keep any of these reserves from going to the Orient.

When the verbal battle began in earnest at the Seat of Government on 15 April 1937, California had not yet enacted her State Lands Act to assure some workable measure of control over the resources of the marginal sea. By the time this statute was on the books, one year later, the issue was joined politically; the Navy had entered the fray for the reasons discussed above; and it was to take a real shooting war to get the Service out of the political arena and leave the argument to the politicians. Even they were reasonably quiescent during the years of World War II when there were no fuel surpluses. After its unsuccessful endeavours of 1939, the Navy withdrew from the argument until they were abruptly returned to the lists by President Truman on 16 January 1953.

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[1] Hearings on Senate Joint Resolution, 83 and 92, (1939), p. 21-22.

VI. CONGRESSIONAL AND EXECUTIVE ACTIONS AND JUDICIAL DECISIONS, 1937 - 1952

A. Congressional Actions

The opening blow of the controversy in Congress over the ownership and control of the marginal sea belt was delivered on 15 April 1937 when Senator Gerald P. Nye introduced Senate Bill 2164 which, in effect, declared that the lands beneath the seas in the marginal belt off all coastal states were a part of the public domain of the United States. Six days later, the Navy Department wrote the Chairman of the Senate Public Lands Committee urging Congress to enact a law declaring that these submerged lands were a part of the "public domain" of the United States in order that the Federal Mineral Leasing Act might be invoked for the "conservation of mineral resources in these areas."[1]

Senator Nye's original bill was quickly withdrawn because it was reasoned that if the Federal government already held title to the areas in question, the issue might be more properly met by means of a Joint Congressional Resolution directing the Attorney General to assert such title. Such a resolution was then introduced by Senator Nye—Senate Joint Resolution 208—asserting that all submerged lands below the low-water mark and within the three-mile-limit were the property of the United States; and since certain persons were entering upon them and removing oil, it directed the Attorney General of the United States to "assert, maintain, and establish the title and possession of the United States to the submerged lands aforesaid."[2]

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[1] Hearings on Senate Joint Res. 208 (1938), p. 31.

[2] 81 Congressional Record, p. 9326.

[illegible]

[illegible]

[illegible]

On 19 August 1937, with no public hearings by any Senate committee, and with only an explanation on the floor, in which no dissenting voice was raised, the resolution was passed by the Senate.[1]

On 23, 24, and 25 February 1938, the House Committee on the Judiciary held hearings on this Senate Joint Resolution 208, the first hearings in a series on the subject that continued at intervals, though with startling regularity, until mid-1953, and that may be renewed before the snows of 1955 melt if the Eight-fourth Congress convenes in January of that year with a Democratic majority.

Although the Committee, by a vote of 10 to 8, favorably reported a modified resolution to the House, it failed to come to a vote on the floor and died on the calendar of the Seventy-fifth Congress.

This modified resolution was essentially a declaration: (1) that the conservation of petroleum deposits in the submerged lands, "adjacent to and along the Coast of California" was essential for national defense, maintenance of the Navy, and protection and regulation of interstate commerce and (2) that the right of the Federal government in this area was an "attribute of its sovereignty, paramount and exclusive"; and a directive to the Attorney General to maintain this right against trespassers through appropriate judicial proceedings.[2]

When the Seventy-sixth Congress convened, there were no fewer than five resolutions introduced in the premises. Senator Nye introduced a new resolution (S. J. Res. 24) repeating his original Senate Joint Resolution 208 of the previous year and then followed it with Senate Joint Resolution 92, paralleling the modified version that had resulted from the earlier House committee hearings. Senator David Walsh, acting for the Navy Department as Chairman of the Naval Affairs Committee, introduced a similar

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[1] Hearings on Senate Joint Res. 13 et al, (1953), p. 641.

[2] H. R. Report No. 2378, 75th Congress, 3rd Session, 19 May 1938.

[illegible] [illegible] [illegible] [

measure, Senate Joint Resolution 83. Two comparable resolutions were introduced in the House of Representatives, House Joint Resolutions 176 and 181. Hearings were held in committees of both the Senate and the House on these measures, but neither House nor Senate took any decisive action.[1]

With the failure of these two years of work to obtain a Congressional mandate favoring Federal ownership of the submerged lands, or at least Federal ownership of the petroleum in them, there was a temporary halt in such endeavours. The outbreak in Europe of World War II seemingly occupied the minds of all principals sufficiently that the offshore oil controversy was relegated to the background.

The next Congressional action on the matter came after the surrender of Germany when, on 18, 19 and 29 June 1945, the Committee on the Judiciary of the House of Representatives and a special subcommittee of the Judiciary Committee of the Senate held hearings on House Joint Resolution 118 and numerous companion bills.[2] This measure in essence quitclaimed to the states those submerged marginal lands within state boundaries at the time they entered the Union.[3] The roll of sponsors of this and its companion bills is worth noting. Nine similar resolutions had been introduced by Representatives and Senators from California, three by members from Louisiana and one each by members from Mississippi, Alabama, Maine, Illinois, Ohio and Nevada.[4] The absence of Texas is unusual, unless one surmises that Texans were certain they already owned their offshore lands. Although the two Great Lakes states may be considered as participating because of their possible interest in lands beneath the Lakes, the presence of Nevada is inexplicable

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[1] Hearings on Senate Joint Res. 13 et al, (1953), p. 7.

[2] Ibid., p. 7.

[3] Hearings on Senate Joint Res. 13 et al, (1953), p. 7

[4] Ernest R. Bartley, op. cit., p. 144.

[illegible] on Omaha Avenue Ord., 13 Wd 44, (1939), p. 7.

[illegible], p. 7.

[illegible] on Omaha Avenue Ord., 13 Wd 44, (1939), p. 7.

[illegible], Interlay, Inc. Ord., p. 116.

unless it may be surmised that Senator McCarran hoped to obtain for his state some of the Federal lands within that state by supporting the giving away of the other possible Federal lands.

It is significant that none of these resolutions made any claims for ownership by either the Federal government or the states. They were all designed merely to certify that it was the mind of Congress that the Federal government either recognized that the submerged lands belonged to the states, or that it was thereby giving the lands to the states in case any one considered that the Federal government was the owner.

The June hearings resulted in House Joint Resolution 225 being reported out favorably and this measure passed the House on 21 September 1945, quitclaiming for the Federal government "right, title, interest or claim" in the submerged lands within the three mile limit.[1]

On 5, 6 and 7 February 1946, the Senate Judiciary Committee held hearings on this measure, reporting it out favorably, and on 24 April 1946 the measure passed the Senate. After a conference to clear slight differences between the House and Senate versions, the measure was sent to the President in final form on 23 July. President Truman vetoed this legislation on 2 August 1946 and the House failed to over-ride the veto.

At this point the situation neared an impasse. Proponents of Federal ownership had been unable to obtain a favorable decision from the Congress and the proponents of state ownership had been equally unable to obtain a favorable decision from the President. In retrospect, it would appear that a compromise might have been in order, but neither side was ready for compromise and none was offered.

By the time Congress convened in early 1948, the Supreme Court had ruled against the State of California in the matter of submerged lands and

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[1] Hearings on Senate Joint Res. 13 et al (1953), p. 7.

it was apparent that positive Congressional action would be required if the proponents of state jurisdiction were to salvage their contentions.

For seventeen days in February and March of 1948, joint hearings were held before subcommittees of both the House and Senate Committees on the Judiciary on Senate Bill 1988 and more than a score of companion House bills, quitclaiming to the states submerged coastal lands within original state boundaries. This measure was favorably reported to the Senate, but before it was considered on the floor, the House had passed a nearly identical bill, House Bill 5860. Because of the imminence of the Republican National Convention and the threat of a filibuster by a pair of New England senators, both quitclaim measures died on the calendar of the Senate of the Eightieth Congress.[1]

When the Eighty-first Congress convened, there was the usual rash of quitclaim bills, but by new compromise proposals were entering the picture. Two diametrically opposite bills were introduced in the House (H.R. 5991 and H.R. 5992) for the express purpose of searching for a compromise between them. Senator Langer of North Dakota introduced a bill (S. 1700) proposing that the states have jurisdiction within one mile of the shore and that a Federal waterlands reserve be created in the remaining area, with the proceeds therefrom going into a fund to aid education. Since most of the then producing wells in California were within one mile of the shore, this could have been a sound basis for compromise but neither side was in a compromising mood. During this Congress, one straight quitclaim measure (H. 8137) was reported out to the House, but no submerged lands bills came to a vote, although there had been three separate sets of lengthy hearings between 24 August 1949 and 19 August 1950.[2]

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[1] Hearings on Senate Joint Res. 13 et al (1953), p. 8 and Ernest R. Bartley, op. cit., pp. 217, 218.

[2] Hearings on Senate Joint Res. 13 et al (1953), p. 8

In the Eighty-second Congress, the matter of oil beneath the submerged marginal lands was again a strident issue. The usual multitude of bills was introduced. The House, without additional public committee hearings, passed a quitclaim bill (H. 4484) on 30 July 1951. This bill was different in some significant respects from previous quitclaim measures, and might be considered to have been somewhat in the nature of a compromise. It confirmed title to offshore soils to the states, out to their original boundaries, and then declared that the United States controlled the continental shelf beyond those boundaries. This Congressional recognition of Presidential Proclamation No. 2667 is significant, since it foretold the later outcome of the controversy. The Senate passed a similar measure (S.J. Res. 20) on 2 April 1952, after lengthy additional public hearings, and the conference report was approved and sent to the President on 16 May 1952. On 29 May, President Truman exercised his power of veto and again enough votes to over-ride the veto could not be mustered.[1]

This failure to reach any legislative solution to the controversy completed the Congressional actions under the Democratic Administration, but the foundation was well laid for the people of the nation to express their views on the matter at the 1952 General Election.

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[1] Hearings on Senate Joint Res. 13 et al, p. 8 and pp. 654-656.

[illegible] in Jessie Juliet Tarr, 17 Ad Alt, p. 7 and ex, 409–504.

B. Executive Actions

Until 1937, the Department of the Interior had consistently declined to accept or consider applications for Federal mineral leases in the offshore marginal lands. Beginning in that year, at about the same time that Senator Nye introduced his first bill, Secretary Ickes, instead of denying and returning such applications, commenced to hold them in abeyance.[1] In this way, that Executive Branch entered the controversy. As the situation developed, the Interior Department and Secretary Ickes, as an individual and as a government official, were to carry the brunt of the Federal government's position for many years.

As previously noted, the Navy Department also entered the lists early in the fray. A letter, dated 19 February 1938, from the Secretary of the Navy to the Chairman of the House Judiciary Committee, quite clearly states the position of the Navy in the 1937-1939 period, a position that the Service steadfastly maintained throughout this period. Pertinent portions of that letter, which contained a suggested and recommended resolution, are quoted as follows:

> "Whereas the petroleum reserves in the United States are constantly decreasing and are in serious danger of depletion or loss from various causes; and
>
> "Whereas large petroleum deposits underlie various submerged lands along and adjacent to the coasts of the United States and its territories and possessions, below low-water mark and under the territorial waters thereof; and
>
> "Whereas the conservation of the aforesaid petroleum products is essential for purposes of national defense and future maintenance of the Navy; and

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[1] Hearings on Senate Joint Res. 83 and 92, (1939), pp. 23, 24.

[illegible] in Alaska Land Use, 83 Nat 93, (1977), pp. 12, 36.

> "Whereas various persons have heretofore entered, or intend and propose to enter, upon and beneath such submerged lands and have removed or propose to remove the petroleum deposits underlying the same, without the consent or permission of the United States, and to the irreparable damage and injury of the United States; and
>
> "Whereas immediate action on the part of the United States is necessary to preserve such petroleum deposits for the future use of the United States: Now, therefore, be it
>
> "Resolved...That the conservation of petroleum deposits underlying submerged lands adjacent to and along the coasts of the United States...is hereby declared to be essential for purposes of national defense and the future maintenance of the Navy; and that the President is hereby authorized and directed to reserve and set aside as naval petroleum reserves any and all such deposits or submerged lands as he shall find contain or are likely to contain such deposits, ...subject to the same control by the Secretary of the Navy as is provided for other naval petroleum reserves;..."[1]

The balance of the recommended resolution relates to directing the Attorney General to institute appropriate judicial proceedings to assert Federal title to the lands involved.

From the demise of the legislative efforts in 1939 to the filing by the Department of Justice of the first court suit, on 29 May 1945, it appears that no significant action was taken by the Executive Departments.

It was reported in the 1945 hearings before the Joint Congressional Committee that the Departments of Justice, Interior and Navy had all been asked if they had anything to contribute.[2] Only two replies were received; both the Attorney General and the Secretary of the Interior sent non-committal replies to the effect that the question of quitclaim was a policy issue to be left to the determination of Congress.[3] The failure of the Navy Department to express any view whatever is mute evidence of their apparent loss of interest in the matter.

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[1] Hearings on Senate Joint Res. 13 et al, (1953), pp. 641, 642

[2] Hearings on House Joint Res. 118 et al, (1945), p. 121.

[3] Ibid., pp. 19 and 159-161.

[illegible]

The writer is personally acquainted with Commodore W. B. Greenman, who was Director of Naval Petroleum Reserves at that time. Since Commodore Greenman held, and deserved, the nickname, "The Screaming Panther", it is inconceivable that he would have kept quiet if any Navy interest existed. It should be noted, however, that the Navy was then hard at work exploring Naval Petroleum Reserve No. 4 in the Point Barrow, Alaska area.

Commencing in 1946, both the Attorney General and the Secretary of the Interior staunchly opposed all quitclaim attempts in Congressional hearings.

As previously mentioned, the first court suit, to enjoin the Pacific Western Oil Company from "extracting additional oil in the rich submerged Elwood Field near Santa Barbara" was filed by the Department of Justice on 29 May 1945.[1] On 19 October 1945, this suit was dropped, at which time the Attorney General filed action against the State of California in the original jurisdiction of the Supreme Court of the United States.

The existence of this undecided suit served as the grounds for President Truman's veto, on 2 August 1946, of the first quitclaim measure to be passed by the Congress. The President merely stated that the issue was currently before the Supreme Court for decision and should not be disturbed; he wanted determination on the legal issues involved.[2]

On 23 June 1947, the Supreme Court, by a divided opinion, held for the United States and against California in United States v. California. The substance of this decision was to the effect that California did not own the contested area and that the United States had paramount rights therein.[3] With the entering of a final order and decree by the Supreme Court on 27 October 1947, the case was closed.

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[1]Ernest R. Bartley, op. cit., p. 159, quoting from Los Angeles Times, 30 May 1945.

[2]92 Congressional Record 10660.

[3]332 U. S. 19.

[illegible]

As has been noted previously, the opponents of Federal ownership and control countered this loss of a judicial battle by increasing the tempo of their legislative war. Again they were strongly opposed in hearings by representatives of the Department of Justice and the Department of the Interior and on the floor by legislators favorable to the administration's position.

On 21 December 1948, suits were filed in the original jurisdiction of the Supreme Court against Texas and Louisiana, quite similar to the suit that had been won against California. Decrees in favor of the United States were handed down in each of these cases on 11 December 1950, the form followed being essentially that used in the United States v. California.[1]

These further judicial blows to the proponents of state ownership prompted a new flood of efforts to obtain legislative relief, but, as previously noted, passage by Congress of a quitclaim measure was not achieved until 16 May 1952.

This time there could be little doubt of the authority of the Congress to dispose of the submerged lands as they chose. The only obstacle was in obtaining the concurrence of the President.

The Administration and the Executive Departments, however, still strongly opposed quitclaim. President Truman, in his veto message of 29 May 1952, stated his administration's views quite clearly and at considerable length, as shown in the following extracts from that message:

> "...I have concluded that I cannot approve this joint resolution, because it would turn over to certain states, as a free gift, very valuable lands and mineral resources of the United States as a whole - that is, of all the people of the country. I do not believe such an action would be in the national interest...

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[1] United States v. Louisiana, 340 U. S. 899 and United States v. Texas, 340 U. S. 900.

> "...it is of great importance that the exploration of the submerged lands - both in the marginal sea belt and the rest of the Continental Shelf - for oil and gas fields should go ahead rapidly, and any fields discovered should be developed in an orderly fashion which will provide adequate recognition for the needs of national defense...
>
> "I wish to call special attention to the need for considering the national-defense aspects of this matter - which the present bill disregards completely.
>
> "...It is not too much to say that in passing this legislation the Congress proposes to surrender priceless opportunities for conservation and other safeguards for national security. I regard this as extremely unfortunate, and it is for this reason especially that the Department of Defense has strongly urged me to withold approval..."[1]

For the first time in thirteen years, the military services re-entered the controversy openly. Note the President's reference to the urging of the Defense Department against the quitclaim measure. By this time, the original rosy prospects of the Point Barrow Reserve had been largely disproved. Careful readers of this veto message should not have been at all surprised by the President's later sudden setting aside of the marginal sea area as a Naval Petroleum Reserve, it seems to be almost presaged.

With this veto message, the actions in the premises of the Executive Branch under the Democratic Administration were nearly concluded. It was on this note that the issue was submitted to the electorate in the 1952 elections.

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[1] Hearings on Senate Joint Res. 13 et al, (1953), p. 649-654.

[illegible] on [illegible] Stat. 17 at 21. [illegible] by [illegible].

C. Court Decisions

During the period from 1937 to 1952, the most important court decisions of the entire controversy were the three handed down by the Supreme Court of the United States in the suits filed by the Federal Government against the three states with either actual offshore petroleum production or excellent prospects for such production—California, Louisiana and Texas.

Since offshore oil had first been discovered along the California coast, and because most of the early attempts for Federal control of the submerged marginal belt had been directed at this coast line, it is reasonable that the first suit should have been filed against California.

The substance of the Federal government's claim is contained in the following quoted paragraph from the complaint:

> "At all times mentioned herein, plaintiff was and now is the owner in fee simple of, or possessed of paramount rights in or powers over, the lands, minerals, and other things of value underlying the Pacific Ocean, lying seaward of the ordinary low water mark on the coast of California and outside of the inland waters of the state, extending seaward three nautical miles and bounded on the north and south, respectively, by the northern and southern boundaries of the State of California."[1]

The substance of the pleadings of this case have been generally covered previously herein. Emphasis was placed by the state on the indicated and accepted (until 1937) doctrine of state ownership and the sudden interest of the Federal government only when the areas were found to contain valuable petroleum deposits. The Government based its case mostly on the international law aspects, and the retention by the Federal government of the public lands within the state.

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[1] Ernest R. Bartley, op. cit., p. 162 quoting from Supreme Court of the U. S., No. 12 Original, 1945 Term.

> "It will likely restrict [illegible] mobility was not the
> [illegible] on [illegible] of, or [illegible] of [illegible]
> rights to [illegible] [illegible], [illegible] [illegible],
> [illegible] of [illegible] [illegible] [illegible] [illegible],
> of the [illegible] [illegible] [illegible] [illegible] of [illegible]
> and [illegible] of [illegible] [illegible] of [illegible],
> [illegible] [illegible] [illegible] [illegible] [illegible]
> [illegible], [illegible] by [illegible] [illegible]
> of [illegible]."[1]

The [illegible] of [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible]. [illegible] was [illegible] by [illegible] on [illegible]
[illegible] and [illegible] [illegible] [illegible] of [illegible] [illegible] and [illegible]
[illegible] [illegible] of [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible]

Justice Black, who prepared the majority opinion in this decision, stated:

> "The crucial question on the merits is not merely who owns the bare legal title to the lands under the marginal sea... (The United States Government) asserts that proper exercise of these constitutional responsibilities requires that it have power, unencumbered by state commitments, always to determine what agreements will be made concerning the control and use of the marginal sea and the land under it...In the light of the foregoing, our question is whether the state or the Federal Government has the paramount right and power to determine in the first instance when, how and by what agencies, foreign or domestic, the oil and other resources of the soils of the marginal sea, known or hereafter discovered, may be exploited."[1]

Later in the opinion, Justice Black wrote:

> "Not only has the acquisition, as it were, of the three-mile belt been accomplished by the National Government, but protection and control of it has been and is a function of national external sovereignty...The three-mile rule is but a recognition of the necessity that a government next to the sea must be able to protect itself from dangers incident to its location;...insofar as the nation asserts its rights under international law, whatever of value may be discovered in the sea next to its shores and within its protective belt, will most naturally be appropriated for its use... What this government does, or even what the states do, anywhere in the ocean, is a subject upon which the nation may enter into and assume treaty obligations...The very oil about which the state and the nation here contest might well become the subject of international dispute and settlement."[2]

Thus the decision in this case was essentially that California did not own the contested area and that the United States has "paramount rights" therein. The decision did not hold that the Federal government held title to the submerged marginal belt, but only that protection and control of it was a function of national sovereignty.[3]

With this judicial victory under its belt, the Federal government moved to clear up the matter with respect to the other two oil-producing

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[1] 332 U. S. 19, 29.
[2] 332 U. S. 19, 34, 35.
[3] 332 U. S. 19.

[illegible]

[illegible]

[illegible]

coastal states. On 21 December 1948, only after the general elections had returned the Democratic Administration to office, suits were filed against Louisiana and Texas.

Because of the different manners in which the states of Texas and Louisiana had entered the Union, and because neither entry fully paralleled that of California, it might have been surmised that court rulings with respect to these two states would vary somewhat from that handed down in the California case.

The arguments before the court did recognize the different manners of entry, but the court's decisions were the same, re-asserting the doctrine of paramount rights.

With respect to Louisiana, Justice Douglas wrote in the majority opinion:

> "As we pointed out in United States v. California, the issue in this class of litigation does not turn on title or ownership in the conventional sense...The marginal sea is a national, not a state concern. National interests, national responsibilities, national concerns are involved. The problems of commerce, national defense, relations with other powers, war and peace focus there. National rights must therefore be paramount in that area."[1]

The different mode of entry of Texas was ruled on in the following statement from the majority opinion, also written by Justice Douglas:

> "When Texas came into the Union, she ceased to be an independent nation...The United States then took her place as respects foreign commerce, the waging of war, the making of treaties, defense of the shores, and the like. In external affairs, the United States became the sole and exclusive spokesman for the Nation. We hold that as an incident to the transfer of that sovereignty any claim that Texas may have had to the marginal sea was relinquished to the United States."[2]

Again, with respect to Texas, the doctrine that the National government held paramount rights, superior to those of the state, was enunciated when Justice Douglas wrote:

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[1] 339 U. S. 699, 704.

[2] 339 U. S. 717, 718.

[illegible]

> "It is said that there is no necessity for it - that the sovereignty of the sea can be complete and unimpaired no matter if Texas owns the oil underlying it. Yet as pointed out in United States v. State of California, once low-water mark is passed the international domain is reached. Property rights must then be so subordinated to political rights as in substance to coalesce and unite in the national sovereign...If the property, whatever it may be, lies seaward of low-water mark, its use, disposition, management, and control involve national interests and national responsibilities. That is the source of national rights in it..."[1]

Thus was the controversy dealt with by the highest judicial body in the land; thus did the situation remain until 16 January 1953.

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[1] 339 U. S. 719, 720.

VII. EXECUTIVE ORDER 10426 - 16 JANUARY 1953

A. The Navy Receives the Offshore Oil

Executive Order 10426, entitled, "SETTING ASIDE SUBMERGED LANDS OF THE CONTINENTAL SHELF AS A NAVAL PETROLEUM RESERVE," and issued by President Truman, with almost no advanced notice, on 16 January 1953, has been referred to several times hereinbefore. Stripped to its essence, the Order provided as follows:

> "By virtue of the authority vested in me as President of the United States, it is ordered as follows:
>
> "SECTION 1. (a) Subject to valid existing rights, if any, and to the provisions of this order, the lands of the Continental Shelf of the United States and Alaska lying seaward of the line of mean low tide and outside the inland waters and extending to the furthermost limits of the paramount rights, full dominion, and power of the United States over lands of the Continental Shelf are hereby set aside as a naval petroleum reserve and shall be administered by the Secretary of the Navy.
>
> "(b) The reservation established by this section shall be for oil and gas only, and shall not interfere with the use of the lands or waters within the reserved area for any lawful purpose not inconsistent with the reservation."[1]

Nearly sixteen years after they had originally asked for it, the Navy had the offshore oil. They had not only the California oil they had wanted in order to keep it away from the Japanese; they had all the offshore oil. The Supreme Court had said that the oil belonged to the National Government; Congress had been unable to legislatively give it to the states; and now the President had said that all the offshore oil and gas deposits

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[1] Fed. Doc. 53-734, as quoted from Hearings on Senate Joint Res. 13 et al, (1953), p. 1230.

[illegible]

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[illegible]

were to be administered by the Secretary of the Navy.

The order did provide that the existing situation was to continue in California, where offshore wells were producing under a stipulation entered into between the Attorney General of the United States and the Attorney General of California. The order further provided that leases and permits in effect in the Gulf of Mexico were to continue in force. With these two "fine print" provisions in effect, it turned out that the Navy didn't have much producible oil of its own, but they had tremendous prospects.

B. Actions of the Office of Naval Petroleum Reserves

Establishment of this huge new reserve had little effect on the operations or organization of the Office of Naval Petroleum Reserves. Headquarters of the Director were in Denver, Colorado and there were field offices at Tupman, California; Casper, Wyoming; and Fairbanks, Alaska.[1] A temporary Washington office was immediately established to handle matters relating to the administration of the submerged oil lands of the Continental Shelf and to provide information, liaison and assistance to other activities at the Seat of Government.[2]

This Washington office was staffed by one officer of the Navy's Civil Engineer Corps and one borrowed secretary.[3] One might almost suspect that they didn't expect to stay in business very long. This suspicion is confirmed by the following statement of Rear Admiral Ira H. Nunn, Judge Advocate General of the Navy, before the House Committee on the Judiciary, on 26 February 1953:

> "If, after the enactment of legislation, there remains in the Navy any continuing responsibility for any of the submerged oil lands, an appropriate increase in the existing organization will be required."[4]

The Navy office in Washington did accomplish one thing. From the time of its establishment until 7 August 1953, the date administration of the submerged lands of the outer continental was transferred back to the Secretary of the Interior from the Secretary of the Navy, the office

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[1] Hearings on H.R. 2948, et al, (1953), p. 211.

[2] Ibid., loc. sit.

[3] CDR W. M. Gustafson, CEC, USN, "Black Gold Beneath the Seas," U.S. Navy Civil Engineer Corps Bulletin, Vol. 7, No. 11, Nov. 1953, p. 13.

[4] Hearings on H.R. 2948, et al, (1953), p. 211.

B. Violation of the Duties of Good Faith and Loyalty

Misappropriation of Trade Secrets and Unfair Actions on the Expectancy or Relationship of the Duties of Good Faith and Loyalty

Development of the Interest Test in Misappropriation Cases, 1 A Preliminary Injunction Action was Successfully Maintained by Showing Evidence of the Unauthorized Use of Trade Secrets, Despite Any Intervening Actions by Other Parties at the Time of Discovery.[2]

This Knowledge Action was Shorter by One Attempt of the Duty's Right Judgment Cases Had Not Improved Anonymity,[3] One Might Almost Suppose Every Judge's Answer to What In Business Must Cease. This Association Is Manifest by the Following Provisions of Liver Adopted Its C. Court, Under Adequate Security of the Duty, Indeed the Basic Conditions of the Injunction, or It Formerly Did:[4]

> "It, after the Amendment of Injunction,
> Shall Provide to the Duty Any Continuing Provision-
> ality for Use of Or Subsequent Act Taken, As
> Appropriate Pursuant to the Preceding Sub-
> Item Will Be Included."[5]

The Duty Utilize In Prohibition Act Manipulation Use Thing. From the Time of the Preliminary Until 7 August 1972, the Date Predetermination of Misappropriation Cases Had Increasingly Been Considered Only So the Anonymity of the Interim Time the Duration at Law Duty, the Duty

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[1] Compare Un C.S. Steel, et al. (2022), p. 222.

[2] Id., p. 224.

[3] See C. C. Corporation, 100, "Claims Could Exempt the Case," p. 2.

[4] Some Civil Employee Common Injunctions 102, p. 17, Dec. 1973, p. 13.

[5] Compare Un C.S. Steel, et al. (2022), p. 222.

collected $3,158,974.63 as the Federal government's share of the production of petroleum from the lands under the Navy's jurisdiction.[1]

[1] CLP Gustafson, loc. cit.

VIII. NATIONAL GOVERNMENT ACTIONS, 1953 - 1954

A. Legislative Action, 1953

When the Republicans took over the administration of the Federal government just four days after President Truman dropped his bombshell by establishing the offshore naval petroleum reserve, they were all ready to deliver victory to the proponents of state control just as quickly as it could be done.

During the election campaign of the fall of 1952 the so-called "Tidelands Oil Controversy" had been an important element. General Eisenhower, as the Republican Presidential Nominee, had declared himself as a proponent of state control of the marginal sea belt. The Democratic Nominee, Governor Stevenson, had indicated concurrence with the actions taken by President Truman. While the offshore oil controversy was not in itself the most important national issue, there can be no doubt that it was seriously important, especially in certain parts of the country. It may be reasonably surmised that this issue was at least in part responsible for General Eisenhower's carrying Texas with its sizeable count of electoral votes. Elsewhere, the offshore oil controversy was perhaps just another point in the score against the Democrats, as the electorate expressed its will that it was "time for a change."[1]

When the new Congress convened, thirty-seven bills concerning offshore submerged lands were referred to the House Committee, on the Judiciary[2] and four were referred to the Senate Committee on Interior and Insular Affairs.[3]

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[1]From the 1952 Republican campaign slogan, "It's Time For A Change!"; sometimes freely translated as, "Throw The Rascals Out!"

[2]Hearings on H.R. 2948, et al, (1953), p. 2.

[3]Hearings on Senate Joint Res. 13, et al, (1953), p. 3.

[illegible] Legislation, 1923 - 1929

[illegible] Legislation Session, 1929

[illegible] over the administration of the Federal [illegible] Government just then [illegible] President Truman [illegible] but [illegible] the [illegible] the situation [illegible] [illegible] [illegible]

Hearings before the House Committee were held on 17 and 26 February and 3, 4 and 5 March 1953. Hearings before the Senate Committee were more extensive, being held for thirteen days between 16 February and 4 March 1953. Despite the opening statement to the Senate Committee by Senator Cordon of Oregon that, "all will agree that with the truly voluminous record already before the Committee, and in view of the fact that legislation already is long overdue in this matter, this year's hearing should be confined to matters not already before the Committee," there was much repetition before both committees of previously given information, and considerable exact duplication of information received by the two committees. Little that was new or startling occurred at the hearings, although the record of the Senate hearing is particularly valuable to a student of the controversy because it recapitulates and conveniently assembles a great deal of the information given in previous hearings.[1]

In order not to endanger the chances for return to the states of the marginal seas within their historic boundaries, these areas were separated in the legislation from the outer continental shelf areas.

On May 1953, the first of these items of legislation became the law of the land. Section 4 of this Submerged Lands Act approved and confirmed the seaward boundary of each coastal state among the original thirteen as "a line three geographical miles distant from its coast line." It also provided that "any state admitted subsequent to the formation of the Union which has not already done so may extend its geographical boundaries three geographical miles distant from its coast line." To provide for those states who claimed their historical boundaries further seaward than three miles, the Act contained this statement:

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[1] Hearings on Senate Joint Res. 13, et al, (1953), p. 8.

[illegible] [illegible] [illegible] [

> "Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any state's seaward boundary beyond three geographic miles if it was so provided by its constitution or laws prior to or at the time such state became a member of the Union, or if it has been heretofore approved by Congress."[1]

Section 10 of this Act also revoked Executive Order 10426, "insofar as it applies to any lands beneath navigable waters."[2] The Navy no longer had the oil within the historic boundaries of the states, for as a result of this legislation the administration of the submerged lands within the states' newly confirmed boundaries became the responsibility of the states.

The second portion of the legislation of these times, dealing with the outer continental shelf - that portion seaward of the state boundaries - became Public Law 212 on 7 August 1953. This Act in effect confirmed the Presidential Proclamation No. 2667, asserting the United States' sovereignty out to the outer edge of the continental shelf, and transferred administration of these submerged lands from the Secretary of the Navy to the Secretary of the Interior - thereby revoking the balance of Executive Order 10426.[3] That action took away the rest of the Navy's offshore oil and they were right back where they started from sixteen years earlier.

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[1] 67 U.S. Stat. 29.

[2] Ibid.

[3] 67 U.S. Stat. 462.

B. Executive Action, 1953

Other than for the President's promptly signing the two previously described items of legislation when they were transmitted to him by the Congress, the Executive Branch took little direct part in the solution of the controversy as it evolved under the Republican Administration. Cabinet members testified before Congressional Committees when they were asked to do so, but they offered mainly information, not opposition.

However, lest it be thought that the offshore oil was taken from the Navy against its wishes, note should be taken of the below quoted statement by Secretary of the Navy Anderson before the Senate Committee on Interior and Insular Affairs, on 24 February 1953. This statement is also considered to concisely portray what appeared to be the general attitude of the Administration during this seemingly final round of the controversy:

> "...I should like to respectfully state that I, personally, concur with the statement of the Secretary of the Interior in believing that those offshore lands which are determined to be the property of the Federal government could most advantageously and most desirably be administered by the Department of the Interior rather than by the Department of the Navy.
>
> "Implicit in this whole problem is a desirability of solving for all time the question of ownership and jurisdiction over oil-bearing lands beneath the surface of the sea. There should be a solution in order that conservation and development may proceed in the interests of our national community, State or Federal. I venture to hope, therefore, that legislation which may ultimately be enacted will be concerned with the entire Continental Shelf and earmark all portions of it for appropriate ownership, whether State or Federal. It may be that the Congress will determine that there is a difference between ownership of the marginal seas to the historical boundaries of the states and ownership of the petroleum under the

water between historical boundaries and the seaward limits of the Continental Shelf. Without further comment I hope that all areas will be definitely disposed of in the legislation now before it (sic)."[1]

[1] Hearings on Senate Joint Res. 13, et al, (1953), p. 546.

Thornton, op. cit., p. 13; 33 Ill. (1870), p. 384.

C. Subsequent Developments, 1954

There have been no significant or material changes in the jurisdiction or administration of the offshore petroleum deposits since the enactment of Public Law 212 - the Outer Continental Shelf Lands Act - on 7 August 1953.

That is not to say, however, that the controversy stopped completely on that date. During the sixteen year history of the controversy, there have been many periods of quiet longer than the ten months this armistice has now lasted.

As late as 15 March 1954, the Supreme Court denied a request of Rhode Island and Alabama that it hear a challenge of the constitutionality of the Submerged Lands Act. These states had based their suit principally on the "paramount rights" doctrine enunciated by the Court in the California, Louisiana and Texas cases. In the recent decision, the court ruled that there is no restriction on the powers of Congress to dispose of Federal property and therefore it was appropriate that ownership of the submerged lands be clarified or transferred by Act of Congress.[1]

In May 1954, the Supreme Court denied a further request of Rhode Island and Alabama for a rehearing of their challenge.[2]

Nor are things all quiet on the legislative front. On 1 April 1954, Senator Douglas of Illinois, for himself and thirteen other senators, introduced Senate Joint Resolution 145. This resolution is designed "to subject the submerged lands under the marginal seas to the provisions of the

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[1] World Oil, (Vol. 138, No. 5, April, 1954), p. 72.

[2] World Oil, (Vol. 138, No. 7, June, 1954), p. 87.

D. Subsequent Developments, 1929

There have been a number of additional changes in the jurisdiction or administration of the military reservations dropped in since the enactment of Public Law 212 - the Water Conservation Right Act - on 7 August 1929.

That it may be so, however, that the controversy stopped completely on that date. During the minimum year history of the controversy, there have been many periods of quiet longer than the two months this examination has been limited.

As late as 25 March 1930, the Supreme Court denied a request of Rhode Island and Alabama that it hear a challenge of the constitutionality of the Chamberlain Lands Act. These states had based their suit principally on the "paramount rights" doctrine enunciated by the Court in the California, Louisiana and Texas cases. In the recent decision, the court ruled that there is no restriction on the power of Congress to dispose of federal property and therefore it was unnecessary that ownership of the submerged lands be clarified or transferred by act of Congress.[1]

In May 1930, the Supreme Court denied a further request of Rhode Island and Alabama for a rehearing of their petitions.[2]

For one thing all doubt on the legislative front. On 1 April 1930, Governor Pengilly of Illinois, for himself and thirteen other governors, introduced Senate Joint Resolution 145. This resolution is designed "to submit the submerged lands under the navigable rivers to the jurisdiction of the

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[1] World 0211, (Vol. 110, No. 3, April, 1930), p. 12.
[2] World 0211, (Vol. 110, No. 7, June, 1930), p. 27.

Outer Continental Shelf Lands Act (Public Law 212) and to amend such Act in order to provide that revenues under its provisions shall be used as grants-in-aid of primary, secondary and higher education."[1] This resolution has been referred to the Senate Committee on Interior and Insular Affairs, but no hearings have been announced. The net effect of such legislation would be to return conditions to the status they had prior to 16 January 1953. It may be reasonably surmised that no action will be taken on legislation of this nature during the present Eighty-third Congress. It is just as reasonable to speculate that a Democratic victory in the Congressional Elections of November, 1954 would result in a more favorable Congressional atmosphere for such a resolution.

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[1]This description of the intent appears on Senate Joint Resolution 145 as printed for committee use.

[illegible]

IX. PETROLEUM ENGINEERING ASPECTS OF NAVAL PETROLEUM RESERVES

A. Establishment of the Reserves

1. 1912 - 1914[1]

Early in the Twentieth Century, it became apparent that the navies of the world were in the future to be powered by oil, and the United States Navy itself had in prospect a complete changeover from coal to oil. At that time, the requirements of the other military services for petroleum products were limited almost entirely to a few lubricants; ground forces had not been mechanized and air forces were quite insignificant.

Because of this obvious future need of the Government for oil to run the Navy, it was considered that probable oil-bearing lands in the public domain should be permanently withdrawn as areas upon which entry could be made and claims staked out. As a result, President Taft, on 27 September 1909, issued an order temporarily withdrawing from entry and settlement certain large land areas in California and Wyoming. The following year, on 25 June 1910, Congress confirmed the authority of the President to make withdrawals of land in the public domain and ruled that such withdrawals were to remain in effect until revoked by him or by Act of Congress.

President Taft, thereupon, confirmed, on 2 July 1910, the withdrawals he had made the previous year. Neither of these two withdrawal orders mentioned the Navy; the lands were merely withdrawn from entry but

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[1] Much of the information in this subsection is condensed from testimony appearing in Hearings on Senate Joint Res. 13 et al (1953), pp. 125 ff; and Hearings on H. R. 2948 et al (1953), pp. 202 ff. The balance comes from the personal knowledge of the writer or information informally acquired from personnel associated with Naval Petroleum Reserves.

5. Determinants of the Exchange

5.1 1919 – 1920[2]

they still continued as a part of the public domain under the jurisdiction of the Department of the Interior.

On 25 June 1912, the Secretary of the Navy asked the cooperation of the Secretary of the Interior in securing the reservation for the Navy of oil-bearing public lands in California to insure a reserve to 500,000,000 barrels. In response to this request, the Geological Survey recommended an area in Elk Hills, Kern County, California, and on 2 September 1912, President Taft issued an Executive Order creating Naval Petroleum Reserve No. 1 from these lands.

At the time this reserve was set aside for the Navy, no actual discoveries of oil had been made by drilling. The selection of the area was mainly founded on general knowledge of its geology. No one knew at all whether it contained more or less than the five hundred million barrels the Navy had requested.

Because of the uncertainty as to the amount of petroleum contained in Reserve No. 1, the Geological Survey recommended a second reservation in Buena Vista Hills, Kern County, California. Accordingly, by an Executive Order dated 13 December 1912, President Taft created Naval Petroleum Reserve No. 2.

On 29 June 1914, the Secretary of the Navy wrote the Secretary of the Interior that the Navy was thinking of asking the President to create a naval petroleum reserve in the withdrawn lands of Wyoming in order that there might be an assured supply east of the Rocky Mountains. Apparently no mention was made of any quantity of petroleum that was desired. It might even be surmised that the Navy asked for this area principally because they thought they could get it. Accordingly, based on recommendations of the Department of the Interior, President Wilson, on 30 April 1915, signed

an Executive Order designating the Teapot Dome area in Wyoming as Naval Petroleum Reserve No. 3.

All of these reservations were made before the Navy had completed its conversion from coal to oil as fuel for its ships. Little experience data were available upon which to base valid estimates of petroleum requirements. The 500,000,000 barrel "desire" is the one figure history has recorded.

2. World War I and After[1]

Actual British wartime experience in burning fuel oil led to the conclusion within the Navy that the reserves they held were inadequate. Unfortunately, there did not appear to be any sizeable, probable oil-bearing areas left in the public domain in the Continental United States. Consequently, as a further guaranty of oil for the Navy to use in future emergencies, it was decided to segregate and hold apart for such purpose certain areas of the public domain containing shale rock capable of being mined, and from which the hydrocarbons contained therein could be converted into oil. By two Executive Orders, dated 6 December 1916, President Wilson designated an area in Colorado and a separate area in Utah as Naval Oil-Shale Reserves No. 1 and 2, respectively. These were followed on 27 September 1924 by the establishment of Naval Oil-Shale Reserve No. 3, also in Colorado and bordering Shale Reserve No. 1 on three sides.

Awareness of oil-seeps in the Point Barrow—Cape Simpson region of the Alaskan Arctic Ocean coast, during this search for additional naval reserves, led to the designation by President Harding, on 27 February 1923, of 37,000 square miles of the northern tip of Alaska as Naval Petroleum

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[1] ibid.

[illegible]

Reserve No. 4. This huge area was wholly unproven, as to geology as well as petroleum, but it was a sedimentary basin and the seeps did exist.

Except for the brief creation by President Truman thirty years later, this completed the establishment of petroleum reserves for the Navy.

B. Military Petroleum Requirements

Except for the five hundred million barrel figure that prompted the establishment of the first Naval Petroleum Reserve, data are not available on early estimates of the petroleum requirements of our armed forces. Procurement by many agencies from many sources, plus the shroud of security, also obscures valid data for more recent years.

However, present security regulations do permit the use herein of some reasonably valid approximations of petroleum consumption by the military services during and since World War II. Peak military consumption occurred during the latter part of 1944, at which time the rate approximated one and a half million barrels per day! Total consumption by our military forces between the start of World War II in the fall of 1939 and its conclusion in 1945 exceeded one and a half billion barrels! During World War II, the maximum share of the national petroleum consumption rate used by the military was about twenty-one per cent. In recent peacetime years it has approximated three per cent of the total national consumption rate, while during Korean operations the military consumption rate rose to about five per cent of the national total.

It would be disastrous to conclude from these data that a war could be fought to victory by our nation on anything like twenty per cent of our total petroleum consumption. The writer has been informed by reliable authorities who were in the United States during the peak consumption days of 1944 that very little of the nearly six million barrels used each day was going to activities that were not essential to our nation's total war effort.

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[1]All above statistics adapted from Naval War College Review, (Vol. V, No. 7, March 1953), p. 15.

6. Utility Privileges Legislation

Despite the fine Federal utility tariff [illegible] that provides the individuals in the final Soviet Republics receiving, while are not small- ville or nearly exhibited of the privileges recipients of war opera- [illegible] by many agencies [illegible] energy, plus the spread of energy, with charges still data for some service [illegible].

However, because monthly reductions do [illegible] the war [illegible] some [illegible] exist exceptions of privileges for utility [illegible] [illegible] [illegible]

C. Naval Petroleum Reserves - Production and Reserves Data

1. Continental

a. Elk Hills.[1] The only private owner of lands within the perimeter of the reserve was, and is, The Standard Oil Company of California. At present the Navy controls a surface area of 37,554 acres and Standard controls 8,541 acres. Operations at present are under a unit-plan contract between the Navy and Standard, approved by Congress and the President on 28 June 1944. By this contract, the Navy acquired absolute control over the rate of exploration, development and production.

In 1944 production was 17,000 barrels per day and with the signing of the contract, a development program was initiated to raise production to the maximum of 65,000 barrels per day authorized by Congress. Current production necessary to maintain the field in a state of readiness is limited by the Secretary of the Navy to 8,500 barrels per day.

The estimated present productivity of the two horizons in the field is 125,000 barrels per day at the maximum efficient rate, with an initial maximum emergency rate of 180,000 barrels per day. Based on present development plans, the field when completely developed would have a maximum efficient productivity rate of 142,000 barrels per day, with an initial maximum emergency rate of 217,000 barrels per day.

With the relatively complete data now at hand, it is estimated that the total petroleum in this reserve is now 710,000,000 barrels, of which 175,000,000 barrels are held by the Standard Oil Company and the balance of 535,000,000 is held by the Navy. A total of approximately 210,000,000 barrels of oil have been removed from this reserve to date.

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[1] Information and data from Hearings on H. R. 2948 et al (1953), pp. 203, 205, 206, 209; and Hearings on Senate Joint Res. 13 et al (1953), pp. 126, 128, 132.

C. Great Depression Economics - Prohibition and Repealing Laws

1. Introduction

In [illegible], the main purpose behind the prohibition of the production and sale of liquor was to improve the living conditions of the poor. Prohibition was passed by Congress and ratified by [illegible] states in [illegible]. Unfortunately, it proved to be very difficult to enforce and [illegible] Americans [illegible] the law. Organized crime, bootlegging, speakeasies, and [illegible] were all results of prohibition. Corruption was widespread, and [illegible] Al Capone [illegible] Prohibition was finally repealed in [illegible] by the Twenty-first Amendment. Although [illegible] prohibition, it was a failure.

In 1920, production was [illegible] barrels per day with the majority of the revenue, a considerable amount, coming from [illegible] by the millions of [illegible] barrels per day. [illegible] Prohibition was declared by the Supreme Court to be [illegible] and [illegible] barrels per day.

The repealing process immediately [illegible] the [illegible] to [illegible] per day, with an initial [illegible] of [illegible] barrels per day. [illegible] [illegible] [illegible]

b. Buena Vista Hills.[1] Because the acreage owned by the Government is only 34.6 per cent of the field area—10,446 acres out of a total of 30,181 acres—and because a number of diverse private interests within the field are intent on producing oil, it has been impractical for the Government to attain control of production in Naval Petroleum Reserve No.2. Eighty-eight per cent of the Government's lands within this reserve have of necessity been leased to private interests to prevent the loss of petroleum therein by drainage resulting from production operations on adjacent private lands.

There are now approximately 280 productive wells in the reserve on land out-leased from the Government. Present production from the Government's lands approximates 4,500 barrels daily.

This reserve is now estimated to contain only approximately 20,000,000 barrels of recoverable oil from Government lands, while nearly 140,000,000 barrels have already been produced from these lands.

c. Teapot Dome.[2] This most famous and scandal ridden of the Navy's Petroleum Reserves may not really, on the basis of present knowledge, amount to very much as far as oil is concerned, despite its size of 9,321 acres.

All producing wells in this field, which is entirely Navy owned, were shut in on 31 December 1927 and the reserve has remained shut in since that date, except for some small quantity produced during tests of horizons lower than the shut-in Second Wall Creek sand. Prior to shut-in 3,550,228 barrels of oil were produced from this reserve. At the time of shut-in, sixty-four productive wells were producing a total of only 730 barrels per day. Remaining reserves recoverable from the Second Wall Creek sand are estimated to approximate 8,400,000 barrels.

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[1] Hearings on H. R. 2948 et al (1953), pp. 206, 210; and Hearings on Senate Joint Res. 13 et al (1953), pp. 129, 133.

[2] Hearings on H. R. 2948 et al (1953), pp. 203, 206, 207, 210; and Hearings on Senate Joint Res. 13 et al (1953), pp. 127, 128, 129, 133.

b. *Cheap Plastic Coins.*[1] Because the average income of the metropolitan area is only $2,500 per capita, a considerable demand exists for a basic [illegible] which can be sold for $1.00 or less. Investigation indicates that the [illegible] can be made of plastic costing 4¢ per pound. It has been discovered that the [illegible] is strong enough to withstand the usual [illegible] pressures. It is also known that [illegible] can be made of the inexpensive [illegible] which [illegible] that there would be little [illegible] in the [illegible] of economic [illegible] to justify introduction of [illegible] coins. However [illegible] production experience [illegible] minimum [illegible] quantity.

There are also approximately 250 [illegible] which is the [illegible] of [illegible] that are unprofitable. Present [illegible] from the [illegible] supply [illegible] $1,000 [illegible] ability.

This results in one salesman [illegible] [illegible] $5,000,000 [illegible] of merchandise all [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

c. *Electric Irons.*[2] This item [illegible] the average [illegible] of the [illegible] Corporation [illegible] [illegible] [illegible], on the basis of present [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

Discoveries on adjacent lands in lower horizons indicated the desirability in 1952 of exploring deeper beneath the reserve. Test wells indicated the existence of an oil accumulation in the Tensleep sandstone. One test well in this formation was dry, while a second well showed an initial productive capacity of 600 barrels per day. The areal extent, and accordingly, the magnitude of the reserves in this formation cannot, with the present limited data, be even roughly estimated. Additional exploratory drilling is planned in an effort to obtain sufficient data for approximate reserve estimates.

d. Point Barrow.[1] This tremendous reserve area on the Arctic Ocean was the "White Hope" of the Navy during the latter years of World War II and for a few years thereafter. At present, these hopes seem to be definitely graying. It is just too large an area to be properly explored within the limited funds that can be made available for that purpose from Naval appropriations.

Work to date in this reserve has been wholly exploratory, except for one small gas well that was drilled in 1949 to provide approximately half a million cubic feet per day for heat and fuel at Barrow Camp.

A substantial amount of geological and geophysical work has been accomplished. In 1945 an aerial magnetometer survey was conducted over the entire reserve. Between 1946 and 1950 a gravity meter survey was accomplished on the flat Arctic Plain within the reserve. About fifteen per cent of the basin has been covered by seismic work; however, an additional fifty per cent of the area is either not workable by seismic methods or is not considered at this time to require seismic surveying

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[1] Hearings on H. R. 2948 et al (1953), pp. 204, 207, 208; and Hearings on Senate Joint Res. 13 et al (1953), pp. 127, 130, 131.

[illegible]

for a reasonable evaluation. Surface geological surveys have been conducted in approximately ninety per cent of the workable area.

Thirty-five test wells and forty-one core holes have been drilled on the Reserve, ranging in depth from 115 feet to 11,873 feet.

In the Cape Simpson area, about sixty-five miles east of Point Barrow, where active oil seeps exist, two shallow core holes have flowed 20° A.P.I. gravity crude oil at rates of 110 to 250 barrels per day each from a depth of 300 feet in the permafrost which is 1,320 feet thick here. Thirty-three other dry holes in this vicinity, including one test to 7,000 feet and another to 3,774 feet, force the conclusion that the two shallow wells produced from isolated pockets, or at best, from a very narrow strip one or two miles long.

At Umiat, in the southeast corner of the reserve near Latitude 69.5°North, Longitude 152° West, an oil field capable of producing 36.6° A.P.I. gravity crude oil has been discovered. Eleven test wells have been drilled in this field and present estimates of recoverable oil range from 30 to 122 million barrels. The principal factor in the variation of these Umiat potential reserve quantities lies in the estimation of the percentage of oil in place that is recoverable.

In 1951, operations in the Point Barrow Reserve were placed on a strict year-to-year basis, with determinations concerning future exploratory work to be based each year on results to that time and on the expected availability of appropriations. At present, very little work is in progress.

e. Oil Shale Reserves.[1] The Navy has no Congressional authority for the development and operation of their oil-shale reserves. The Bureau

[1] Hearings on H. R. 2948 et al (1953), pp. 204, 207, 208; and Hearings on Senate Joint Res. 13 et al (1953), pp. 127, 130, 131.

Hamilton et al. [2013], pp. 805, 807, and Jenkins

of Mines has been conducting experimental work near Rifle, Colorado, on Navy land with Interior Department appropriations.

Present estimates are that the 36,568 acres of Naval Oil-Shale Reserve No. 1 contain approximately seven billion barrels of recoverable shale oil in rich shales assaying twenty-five gallons or more per ton, and about thirty-six billion barrels of shale oil from the entire deposit, both rich and lean. No similar estimates have been made with respect to the 91,240 acres in Shale Reserve No. 2 and the 22,600 acres in Shale Reserve No. 3.

2. Offshore

a. General Discussion. Since the Navy no longer has any offshore petroleum reserves, it is perhaps useless now to include statistics concerning the estimated quantities of petroleum contained in the lands of the continental shelf. However, those areas outside the historical boundaries of the states are still the property of the Federal government; it may be surmised that they will remain so for some time to come; and it may be presumed that their oil could, in any emergency, be allocated by the Government to national defense. For this reason, brief statistics will be given. That these data on potential reserves are somewhat speculative has been explained previously herein.

b. California. The estimated total potential oil reserves beneath the continental shelf off the California coast are 2,000,000,000 barrels. Of this quantity, 900,000,000 barrels are estimated to lie outside the state boundary, which was assumed to be at the three-mile-limit.[1]

Estimated proved reserves off this coast, as of March 1953, were 160,000,000 barrels, all of which lay within the three-mile state boundary.[2]

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[1] Hearings on Senate Joint Res. 13 et al (1953), pp. 583, 584.

[2] ibid., p. 577.

[illegible] on Senate Finance Comm., 32 [illegible] (1920), pp. 232, 288.

[illegible], p. 222.

c. Texas. The estimated total potential oil reserves beneath the continental shelf off the Texas coast are 9,000,000,000 barrels. Of this quantity, 7,800,000,000 barrels are estimated to lie outside the state boundary, which was assumed to be at the three-league-limit.[1]

Estimated proved reserves off this coast, as of March 1953, were 15,000,000 barrels, all of which lay within the three-league state boundary.[2]

d. Louisiana. The estimated total potential oil reserves beneath the continental shelf off the Louisiana coast are 4,000,000,000 barrels. Of this quantity, 3,750,000,000 barrels are estimated to lie outside the state boundary, which was assumed to be at the three-mile-limit.[3]

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[1] Ibid., pp. 581, 582, 584.
[2] Ibid., p. 577.
[3] Ibid., p. 581, 582, 584.

Estimated proved reserves off this coast, as of March 1953, were 419,000,000 barrels, of which only 84,000,000 barrels lay within the three-mile state boundary.[1]

c. Summary. The continental shelf along the Atlantic Coast must at present be presumed to be without significant reserves; available information on the upper Pacific Coast offers little promise of success; geologic conditions in the areas of the Gulf of Mexico between the Mississippi Delta and the Florida Coast do not appear to be so favorable for the occurrence of petroleum as do the areas to the west.[2] For these reasons, it must be concluded that all probable offshore oil is along the coasts of the three states enumerated in detail.

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[1] Hearings on Senate Joint Res. 13 et al (1953), p. 577. In the event any reader is confused as to whether the Louisiana boundary is at three miles or three leagues, attention is invited to the fact that others have been equally confused. The following colloquy took place before the Senate Committee on Interior and Insular Affairs on 18 February 1953 and is recorded on pp. 279-281 of the above reference:

Senator ANDERSON: I understood that the HOLLAND bill would definitely limit Louisiana to three leagues from the coast.
Mr. LE BLANC (Attorney General of Louisiana): Three miles.
Senator ANDERSON: I thought it was three leagues.
Senator HOLLAND: No, No. Three miles.

Mr. LE BLANC: It does do that, but where are you going to start, Senator, to measure those three geographical miles?
Senator ANDERSON: On the coast.
Mr. LE BLANC: Where does the coast extend to?

Senator ANDERSON: Which is three miles from the shoreline.
Mr. MADDEN (Assistant Attorney General of Louisiana): From the coast and outside inland waters.
Senator ANDERSON: Where is the coast?
Mr. MADDEN: The coast, sir, is something that I cannot tell you where it begins and where it ends.
Senator JACKSON: Should you not come in with a metes and bounds description and define by statute where the coast is?
Mr. MADDEN: That would be an absolutely impossible thing for me to do, sir.
Senator JACKSON: How is a court ever going to do it?
Mr. MADDEN: I do not know, sir, but it would be their problem.

[2] ibid., p. 584.

[illegible] [illegible] [illegible] [

In summary, the probable potential petroleum reserves of the continental shelf off the coasts of the United States amount to fifteen billion barrels, of which twelve and a half billion barrels are estimated to lie in areas retained by the Federal government.

X. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

1. Although the Navy first began acquiring petroleum reserves over forty years ago, its present holdings are inadequate to sustain a war effort of the military services. Maximum useful productive capacity of the Naval Petroleum Reserves does not exceed 220,000 barrels per day, but peak World War II military consumption was nearly 1,500,000 barrels per day.

2. There is little likelihood of the Navy's obtaining any offshore petroleum deposits as permanent Naval Petroleum Reserves. However, in time of emergency, production from the large reserves beneath the Federal owned Outer Continental Shelf and from other Federal owned lands ashore might be allocated to the military services.

3. Allocated production, from the Outer Continental Shelf and from other Federal lands in an emergency, would be available only if these areas were developed prior to the emergency.

4. In our national economic atmosphere, full development of the Point Barrow Reserve and the Outer Continental Shelf can only be accomplished by private capital working with a competitive profit motive.

5. Private capital, working with a competitive profit motive, adequately developed the petroleum industry of the nation to permit the sustenance of a maximum war effort during World War II, with only a small fraction of the military consumption coming from Naval Petroleum Reserves.

6. The best interests of the nation will be served by the development, under private auspices, of petroleum-bearing properties, wherever they may be, to the point that the products may be available at any given time of need.

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7. The best interests of the nation will not be served by unwarranted exploitation, for quick profits and royalties, of our petroleum resources, wherever they may be.

8. Uncontrolled production from the Outer Continental Shelf, with the resultant dumping of this production on the domestic market, could have serious effect on the excellent conservation practices of the Interstate Compact Commission.

8. Uncontrolled production from the Outer Continental Shelf, with the resultant dumping of this production on the domestic market, could have serious effect on the excellent conservation practices of the Interstate Compact Commission.

B. Recommendations

1. It is therefore recommended that the present Naval Petroleum Reserve Policy - as established by the Congress - be revoked and that it be replaced by a new National Defense Petroleum Reserve Policy covering Federally owned lands wherever they may be, and opening them to private development.

2. It is further recommended that the new National Defense Petroleum Reserve Policy embody provisions:

a. Requiring compulsory unitization under the direction of the Department of Defense of all existing or discovered petroleum deposits beneath Federal lands where such unitization is feasible and in the best interests of conservation;

b. Authorizing and directing the Federal agency administering the Outer Continental Shelf to become a member of, and cooperate fully with the Interstate Compact Commission;

c. Giving absolute control over rates of production, within limits established in cooperation with the Interstate Compact Commission, to the Department of Defense; and

d. Granting bonus and royalty provisions sufficiently attractive to foster private exploration and development under the above restrictions.

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